

Exhibit 111

Miller, James E.

July 30, 2007

Chicago, IL

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
-----) Civil Action
This document relates to:) No. 01-12257-PBS
United States of America,)
ex. rel. Ven-a-Care of the)
Florida Keys, Inc.,) Hon. Patti Saris
vs.)
Abbott Laboratories, Inc.,) Magistrate Judge
CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler
-----X

VIDEOTAPED DEPOSITION OF

JAMES E. MILLER

CHICAGO, IL

JULY 30, 2007

Henderson Legal Services
202-220-4158

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<p>1 Videotaped deposition of JAMES E. MILLER, 2 called by the Plaintiffs for examination, taken 3 pursuant to notice, agreement and by the provisions of 4 the Rules of Civil Procedure for the United States 5 District Courts pertaining to the taking of 6 depositions, taken before DEBORAH HABIAN, a Notary 7 Public within and for the County of Cook, State of 8 Illinois, and a Certified Shorthand Reporter of said 9 State, at the offices of Katten Muchin Rosenman, 10 525 West Monroe Street, 19th Floor, Chicago, Illinois, 11 on the 30th day of July, 2007, at 9:12 a.m. 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 APPEARANCES: (CONTINUED) 2 3 BERGER & MONTAGUE, P.C. 4 BY: SUSAN SCHNEIDER THOMAS, ESQ. 5 1622 Locust Street 6 Philadelphia, Pennsylvania 19103 7 (215) 875-3000 8 on behalf of the Realtor, Ven-a-Care; 9 10 11 WEXLER TORISEVA WALLACE, LLP 12 BY: CHRISTOPHER J. STUART, ESQ. 13 55 West Monroe Street 14 Suite 300 15 Chicago, Illinois 60602 16 (312) 346-2222 17 on behalf of the State of Arizona 18 and the MDL Plaintiffs; 19 20 21 22 (CONTINUED)</p>
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<p>1 APPEARANCES: 2 3 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE 4 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE 5 BY: ELISEO SISNEROS, ESQ. 6 DEPUTY ATTORNEY GENERAL 7 110 West A Street 8 No. 1100 9 San Diego, California 92101 10 (619) 688-6043 11 on behalf of the State of California; 12 13 U.S. DEPARTMENT OF JUSTICE 14 COMMERCIAL LITIGATION, FRAUD 15 BY: REBECCA A. FORD, ESQ. 16 601 D Street, N.W. 17 Patrick Henry Building - 9133 18 Washington, D.C. 20044 19 (202) 514-1511 20 on behalf of the United States; 21 22 (CONTINUED)</p>	<p>1 APPEARANCES: (CONTINUED) 2 3 JONES DAY 4 BY: TINA M. TABACCHI, ESQ. 5 77 West Wacker Drive 6 Chicago, Illinois 60601-1692 7 (312) 782-3939 8 on behalf of the Defendants; 9 10 KATTEN MUCHIN ROSENMANN, LLP 11 BY: GIL M. SOFFER, ESQ. 12 DEAN V. HOFFMAN, ESQ. 13 525 West Monroe Street 14 Chicago, Illinois 60661-3693 15 (312) 902-5200 16 on behalf of the deponent. 17 18 19 ALSO PRESENT: 20 ANTHONY MICHELETTO, VIDEOGRAPHER 21 HENDERSON LEGAL SERVICES 22</p>

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<p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Miller 1169, 11/26/96 memoranda..... 216</p> <p>4 Exhibit Miller 1170, ABT 53140 to ABT 53142.... 264</p> <p>5 Exhibit Miller 1171 ABT 53217 to ABT 53238.... 266</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 MR. STUART: Christopher Stuart, Wexler</p> <p>2 Toriseva Wallace representing the State of</p> <p>3 Arizona and the MDL Plaintiffs.</p> <p>4 MS. TABACCHI: Tina Tabacchi from Jones</p> <p>5 Day on behalf of the Defendants.</p> <p>6 MR. SOFFER: Gil Soffer of Katten</p> <p>7 Muchin Rosenman on behalf of the deponent James</p> <p>8 Miller.</p> <p>9 THE WITNESS: James Miller.</p> <p>10 THE VIDEOGRAPHER: The court -- the</p> <p>11 court reporter is Deborah Habian from Henderson</p> <p>12 Legal Services.</p> <p>13 Please swear in the witness.</p> <p>14 THE REPORTER: Please raise your right</p> <p>15 hand, Mr. Miller.</p> <p>16 (Witness sworn.)</p> <p>17 THE REPORTER: Thanks.</p> <p>18 MS. TABACCHI: Before we begin, I just</p> <p>19 need to interject my standard objection to the</p> <p>20 notice of the Class Plaintiffs as untimely.</p> <p>21 MR. SISNERO: Morning, Mr. Miller.</p> <p>22 THE WITNESS: Morning.</p>

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<p style="text-align: right;">Page 10</p> <p>1 2 JAMES E. MILLER, 3 called as a witness herein by the Plaintiffs, 4 having been first duly sworn, was examined and 5 testified as follows: 6 7 DIRECT EXAMINATION 8 BY MR. SISNERO: 9 Q. Mr. Miller, what is your current 10 address? 11 A. New Smyrna Beach, Florida. 12 Q. Have you ever had your deposition taken 13 before? 14 A. Yes. 15 Q. How many times? 16 A. Once. 17 (Enter Ms. Rebecca Ford) 18 Q. And what were the circumstances of that 19 deposition? 20 A. It was a product liability issue 21 between Abbott and a vendor. 22 Q. When was this?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Yes. 2 Q. Okay. Is there any reason we can't go 3 forward with this deposition this morning, any 4 medical reason? 5 A. No. 6 MR. SISNERO: Okay. All right -- all 7 right, could I this marked as Exhibit Miller 8 1160, please? 9 THE REPORTER: Sure. 10 (Exhibit Miller 1160 was marked 11 for ID) 12 BY MR. SISNEROS: 13 Q. All right, Mr. Miller, I've had marked 14 and identified as Exhibit Miller 1160 to your 15 deposition your CV. You've seen that before? 16 A. Yes. 17 Q. You prepared that document? 18 A. Yes. 19 Q. Okay. The -- excuse me. 20 (Off record discussion) 21 BY MR. SISNEROS: 22 Q. All right, if we could just talk a</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Early '80s. 2 Q. What was the product? 3 A. IV sets. 4 Q. And the vendor? 5 A. I do not remember. 6 Q. All right. Well, then let me go over 7 some -- briefly some of the ground rules. 8 Although there is no judge here, there 9 is no jury here, this proceeding is a very formal 10 one because you have been put under oath. Do you 11 understand that? 12 A. Yes. 13 Q. To the best of our ability, both of us 14 should try to avoid talking over each other 15 because the court reporter can only put down what 16 one person speaks at a time. Do you understand 17 that? 18 A. Yes. 19 Q. To the best of your ability, your 20 responses should be audible expressions rather 21 than a nod, an uh-huh, uh-uh, yes, no. You 22 follow that?</p>	<p style="text-align: right;">Page 13</p> <p>1 little bit about your CV. 2 Going back to your formal education 3 starting with -- with your college, you graduated 4 1968 from Wilmington College in Ohio; is that 5 correct? 6 A. That is correct. 7 Q. And was your degree in Industrial 8 Technology? 9 A. Yes. 10 Q. And, briefly, what -- what discipline 11 is that, Industrial Technology? 12 A. Industrial engineering. 13 Q. Industrial engineering. 14 A. (Witness nodding.) 15 Q. Thereafter, your employment with Abbott 16 began in 1972; is that correct? 17 A. That is correct. 18 Q. What did you do between 1968 and 1972? 19 A. I worked for Ross Laboratory, a 20 division of Abbott Laboratories, in Columbus, 21 Ohio, and I went to grad school at Wright State 22 University.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. When you worked for Ross Labs, was that 2 right out of college? 3 A. No. I worked -- I'm sorry. I worked 4 for Ford Motor Company in Claycomo, Missouri. 5 Q. How long did you work for Ford? 6 A. About nine months. 7 Q. And what did you do for them? 8 A. I was a Production Foreman. 9 Q. After Ford, you went to Ross? 10 A. Yes, sir. 11 Q. And -- well, let me ask this. When did 12 you graduate from Wilmington? 13 A. December 1968. 14 Q. When did you start working for Ford? 15 A. January of 1969. 16 Q. So you went over to Ross sometime in 17 the fall of '69? 18 A. Yes, sir. 19 Q. And you remained at Ross until you 20 started at Abbott? 21 A. No, MBA program. I went full-time to 22 the MBA program at Wright State University.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Oh, I'm sorry. That's right there. 2 A. Yeah. 3 Q. Then what did you do between -- well, 4 when did you finish your master's, what year -- 5 what month in '71? 6 A. I do not remember. 7 Q. Did -- after completing your master's, 8 did you go directly to Abbott Labs? 9 A. No. 10 Q. What did you do next? 11 A. When I was getting my master's, I also 12 was approached by National Cash Register and went 13 to work at National Cash Register while I was 14 finishing my master's in Dayton, Ohio. 15 Q. How long did you work for NCR? 16 A. I worked for them until December '72 17 when I went to work for Abbott. 18 Q. What did you do for NCR? 19 A. I was a Financial Analyst -- 20 Q. Any specific duties? 21 A. -- in the factory. Again, I focused on 22 budgeting and cost reductions.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. I see. So you worked for Ross from '69 2 until? 3 A. '70. 4 Q. What did you do for Ross? 5 A. I was a Financial Analyst in the 6 Distribution Department. 7 Q. What were your duties? 8 A. I worked on determining the optimum 9 location for distribution points and negotiating 10 with carriers' freight rates. 11 Q. So your focus was to save the company 12 money? 13 A. Yes, sir. 14 Q. All right, after that, then you went to 15 school at Wright State in Dayton to get your 16 master's -- 17 A. Yes. 18 Q. -- In Corporate Finance? 19 A. Yes. 20 Q. And thereafter, is -- well, when did 21 you complete that program? 22 A. In 1971.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. All right, thereafter, you went 2 to Abbott? 3 A. (Witness nodding.) 4 Q. Correct? 5 A. Correct. 6 Q. All right. Let's talk a little bit 7 about your career at Abbott. You have there from 8 -- in your CV Exhibit Miller 1160 a list of 9 positions you held from 1972 to 2003. You see 10 that? 11 A. Correct. 12 A. Yes. 13 Q. Is that a full and complete list of all 14 the positions that you held at Abbott during this 15 period of time? 16 A. Yes. 17 Q. So when you started it -- at Abbott, 18 you started as a Cost Accounting Manager here in 19 Chicago? 20 A. North Chicago. 21 Q. North Chicago. I'm from the West. 22 Is that correct?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. North Chicago is about 50 miles north 2 of here. 3 Q. Oh, okay. But that's where you 4 started? 5 A. Yes, sir. 6 Q. And when you retired, you retired as 7 Division Vice President - E-Commerce, correct? 8 A. Correct. 9 Q. All right, starting with your first 10 position with Abbott back in 1972, what is it 11 that you did as a Cost Accounting Manager? 12 A. I was responsible for the monthly close 13 of the factory books. 14 Q. What does that mean? 15 A. Determining whether the factory 16 achieved its budget and whether -- basically 17 determine whether the factory made its budget for 18 the month or was over or under -- or positive or 19 negative versus its budget. 20 Q. Again, it seems to be the focus is that 21 you were focused in on cost savings to stay 22 within budget?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I was responsible for all accounting 2 for that plant. 3 Q. And when you say "all accounting," are 4 you talking about the physical plant or 5 additional activity? 6 MS. TABACCHI: Object to the form. 7 BY MR. SISNEROS: 8 Q. All right, let me ask, when you say you 9 are responsible for all accounting for the plant, 10 what do you mean? 11 A. A plant is composed of many 12 departments, okay? So I was responsible for the 13 accounting for the fixed assets of that plant as 14 well as the operational aspects of that plant. 15 Q. What are the operational aspects? 16 A. A plant makes many products, and we 17 were responsible for, again, determining whether 18 those products were produced to budget or over or 19 under budget. 20 Q. Okay, I understand. And, additionally, 21 you're responsible for the -- what you call the 22 fixed assets?</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes. 2 MS. TABACCHI: Object to form. 3 BY MR. SISNEROS: 4 Q. All right, and you did that for about a 5 year? 6 A. Six months. 7 Q. And were you -- was that a supervisory 8 position? 9 A. Yes. 10 Q. And how many folks did you supervise? 11 A. I do not remember. 12 Q. Okay. Then from '73 to '76, you were 13 Plant Controller for Hospital Products; is that 14 correct? 15 A. Same plant. 16 Q. Is that Hospital Products Division? 17 A. Yes, sir. 18 Q. And you did that for -- from 19 -- how 19 long did you do that for? 20 A. '73 through '76. 21 Q. And what is it that you did as Plant 22 Controller?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes, sir. 2 Q. The building? 3 A. The building, the equipment. 4 Q. Okay. And then from -- again, were you 5 -- was this a supervisory position? 6 A. Yes. 7 Q. And from there, you went to Assistant 8 Division Controller FP & A. What does FP & A 9 stand for? 10 A. No, that was not the next job. The 11 next job was Assistant Division Controller - 12 Manufacturing. 13 Q. Oh, yeah, you're right. Again, that's 14 with Hospital Products Division? 15 A. Correct. 16 Q. And that was from 1976 to 1981? 17 A. Correct. 18 Q. And what were your duties there? 19 A. I had multiple Plant Controllers that 20 worked for me. 21 Q. What areas? 22 A. Manufacturing.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. How is that different from your duties 2 as the North Chicago Plant Controller with 3 respect to accounting for the products that are 4 being manufactured? 5 A. I just moved up a layer. 6 Q. You just moved up the supervisor layer? 7 A. (Witness nodding.) 8 Q. And so how many folks did you supervise 9 as Assistant Division Controller? 10 A. I do not remember. 11 Q. All right. But that was a promotion 12 from Plant Controller? 13 A. Yes, sir. 14 Q. All right. And then from there, we go 15 to Assistant Division Controller, FP & A - 16 Hospital Products; is that right? 17 A. Yes, sir. 18 Q. And, again, that's still in the 19 Hospital Products Division? 20 A. Yes, sir. 21 Q. What's FP & A? 22 A. Financial planning and analysis.</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: I'm not -- 2 MR. SOFFER: If you can answer, you 3 may. 4 THE WITNESS: I'm not qualified to 5 answer whether they were generic or not. 6 BY MR. SISNEROS: 7 Q. Okay. With regard to your duties as 8 Assistant Division Controller, FP & A in the 9 Hospital Products Division, I believe you 10 testified that one -- one of the aspects of your 11 work was to see if product was being manufactured 12 according to budget? 13 A. (Witness nodding.) 14 Q. Yes? 15 A. In the manufacturing jobs, yes. 16 Q. How -- did you develop the budgets? 17 A. Early in my career. 18 Q. But not at that point? 19 A. In that point, I would be in a 20 management review of budgets. 21 Q. How would a manufacturing budget for a 22 product be developed?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And what is that? 2 A. That means you work with the -- a group 3 to do budgets again. 4 Q. In what areas would you -- would -- in 5 what areas would you work on budgeting? 6 A. Staff areas. Sales marketing, R & D, 7 administration. 8 Q. The -- again, this was in the Hospital 9 Products Division? 10 A. Yes, sir. 11 Q. In terms of the product that was 12 manufactured by the Hospital Products Division, 13 that was for the most part generic products? 14 MS. TABACCHI: Object to the form. 15 BY MR. SISNEROS: 16 Q. Let me ask this. The pharmaceutical 17 products that were developed by the Hospital 18 Products Division, were they generic products? 19 A. I don't know. 20 Q. So you were unfamiliar as to the type 21 of product that they were developing? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 25</p> <p>1 MS. TABACCHI: Object to the form. 2 MR. SOFFER: Again, if you're able to 3 answer, you may do so. 4 THE WITNESS: You -- we're going to 5 have a discussion on cost accounting. 6 BY MR. SISNEROS: 7 Q. Well, okay, let me ask -- let me ask 8 you this. In your experience at least within the 9 Hospital Products Division -- 10 A. Um-hum. 11 Q. -- the line of positions that you held, 12 you were very involved in cost benefit analysis? 13 A. No. 14 Q. You were very involved in -- in cost of 15 product or the physical plant in relation to what 16 was budgeted for that? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Yes, sir. 19 BY MR. SISNEROS: 20 Q. So you were -- you were primarily 21 responsible for -- for containing costs? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 26</p> <p>1 MR. SOFFER: You may answer if you can.</p> <p>2 THE WITNESS: I was primarily</p> <p>3 responsible to assist line management in the</p> <p>4 identification of causes of cost variances versus</p> <p>5 budget.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay. All right, then from Hospital --</p> <p>8 then from FP & A at the Hospital Products</p> <p>9 Division, you became Division Controller For</p> <p>10 Corporate Materials Management in 1982; is that</p> <p>11 right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay, what is that?</p> <p>14 A. Corporate Materials Management was a</p> <p>15 service division that distributed -- let me back</p> <p>16 up -- operated distribution centers and trucks to</p> <p>17 move product from plants to distribution centers</p> <p>18 and from distribution centers to major customers.</p> <p>19 Q. And what was your responsibility?</p> <p>20 A. I was again responsible for the</p> <p>21 accuracy and the integrity of the books for that</p> <p>22 division.</p>	<p style="text-align: right;">Page 28</p> <p>1 the context of Medicare and Medicaid?</p> <p>2 A. There were DRGs.</p> <p>3 Q. DRG stands for?</p> <p>4 A. Diagnosis related codes -- diagnosis</p> <p>5 related groups.</p> <p>6 Q. Well, what products or services were</p> <p>7 you setting Medicaid/Medicare prices for?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: If you're able to answer,</p> <p>10 you may.</p> <p>11 THE WITNESS: We were in the total</p> <p>12 parental nutrition business, the total enteral</p> <p>13 nutrition business, and the renal care business.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. These are products and services that</p> <p>16 involve infusion therapies; is that right?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Some of these project --</p> <p>19 well --</p> <p>20 MR. SOFFER: You can answer.</p> <p>21 THE WITNESS: Some of these products</p> <p>22 are injected in human beings, and some of them</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And then from there, you got</p> <p>2 promoted to Division Controller - Home Care in</p> <p>3 '83, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Were your duties functionally the same</p> <p>6 as they had been at the Corporate Materials</p> <p>7 Management?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: You may answer if you can.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. All right, let me just ask it this way.</p> <p>12 What were your duties as Division Controller At</p> <p>13 Home Care?</p> <p>14 A. I was responsible for, again,</p> <p>15 maintaining the integrity and accuracy of the</p> <p>16 books for that division and for establishing the</p> <p>17 pricing for our products when we billed Medicare,</p> <p>18 Medicaid and private insurance companies.</p> <p>19 Q. How did you do that?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. How -- how would you price products in</p>	<p style="text-align: right;">Page 29</p> <p>1 are fed orally to human beings.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. When you would -- what did you call</p> <p>4 that, DRGs? I'm sorry, DRGs?</p> <p>5 A. Right.</p> <p>6 Q. When you said pricing -- well, can you</p> <p>7 explain to me how you would set a pricing through</p> <p>8 the DRGs?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 MR. SOFFER: You can answer if you're</p> <p>11 able.</p> <p>12 THE WITNESS: Abbott was a late entrant</p> <p>13 in this market, and there were lots of</p> <p>14 competitive pricing available.</p> <p>15 We were setting the product for the</p> <p>16 individual components that went into a therapy.</p> <p>17 Like if you were on home enteral nutrition, you</p> <p>18 would take a product like Ensure, you would need</p> <p>19 a tube and other ancillary supplies. We set the</p> <p>20 prices for those individual supplies that went</p> <p>21 within a diagnosis group.</p> <p>22 BY MR. SISNEROS:</p>

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<p>1 Q. I see. You -- you weren't responsible 2 for -- for a pharmaceutical product. You were 3 responsible for equipment? 4 A. We sold no pharmaceutical products. 5 Q. You sold equipment? 6 A. Yes. 7 Q. Okay. All right, then from there, you 8 went to, again, Assistant Corporate Controller - 9 FP & A? 10 A. Right, correct. 11 Q. And your duties there? 12 A. Abbott has a budget cycle three times a 13 year, and all the groups submit budgets. My job 14 was to help line management review, analyze and 15 make recommendations. 16 Q. What specific areas of budgeting did 17 you review -- 18 MS. TABACCHI: Object to the form. 19 BY MR. SISNEROS: 20 Q. (Continuing) -- as Assistant Corporate 21 Controller of FP & A? 22 MR. HOFFMAN: You can answer.</p>	<p>1 A. I would have worked with the division 2 controller. 3 Q. Do you recall who that would have been? 4 A. No. 5 Q. Can you give me an example of what you 6 would have been reviewing with a representative 7 from the Hospital Products Division? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: It could be as simple as 10 the wage -- the annual merit wage increase they 11 built in, the annual wage progression they built 12 in to -- could. 13 BY MR. SISNEROS: 14 Q. Well, let me ask you this specific 15 question. Would you -- would your duties have 16 required for a review, for example, of product 17 price increases? 18 A. No. 19 Q. Was there anyone in the controller's 20 office who would have been responsible for that 21 type of review? 22 MS. TABACCHI: Object to form.</p>
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<p>1 THE WITNESS: Every division and every 2 corporate staff function submitted a budget, a 3 budget -- yeah, submitted a budget. 4 BY MR. SISNEROS: 5 Q. So you reviewed all aspects of the 6 business for every division? 7 MS. TABACCHI: Object to the form. 8 MR. SOFFER: You can answer if you can. 9 THE WITNESS: I assisted line 10 management in that task. 11 BY MR. SISNEROS: 12 Q. Those that you supervised? 13 A. No, accounting does not supervise 14 operating units. 15 Q. Well, this particular position then, 16 your duties required that you worked with 17 individuals from the different divisions? 18 A. Yes, and corporate management. 19 Q. And corporate management. 20 A. (Witness nodding.) 21 Q. Did you have a contact in Hospital 22 Products Division?</p>	<p>1 THE WITNESS: At the corporate level? 2 BY MR. SISNEROS: 3 Q. Yes. 4 A. No. 5 Q. At the divisional level? 6 MS. TABACCHI: Object to the form. 7 MR. SOFFER: You can answer if you 8 know. 9 THE WITNESS: Yes. 10 BY MR. SISNEROS: 11 Q. And at the divisional level, who had 12 responsibility for reviewing price increases? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: At that point in time, I 15 cannot tell you. I -- I do not know. 16 BY MR. SISNEROS: 17 Q. And, actually, I'm not looking for an 18 individual's name. I'm looking for a position. 19 Who -- what position in -- within a 20 division would be responsible for reviewing that 21 division's increase -- a price increase of 22 product?</p>

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<p style="text-align: right;">Page 34</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: You can answer if you know</p> <p>3 the answer to the question.</p> <p>4 THE WITNESS: You -- you can -- Abbott</p> <p>5 was six companies -- is six companies. Well, I</p> <p>6 don't know what it is today. When I was there,</p> <p>7 it was six companies.</p> <p>8 You cannot generically say this</p> <p>9 individual in this division is responsible for</p> <p>10 that. They're all organized differently.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. So the responsibility for that duty</p> <p>13 within that division would -- would have been</p> <p>14 identified within the division?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Thereafter, you went to Area Finance</p> <p>17 Director - Europe International?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Were you actually in Europe?</p> <p>20 A. No.</p> <p>21 Q. Okay, what were your duties?</p> <p>22 A. My first duty was to close the Paris</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. Consulting?</p> <p>3 A. Yes.</p> <p>4 Q. What -- do you have your own company?</p> <p>5 A. No.</p> <p>6 Q. What -- who do you consult for?</p> <p>7 A. From a Fortune 500 to a baby company.</p> <p>8 Q. And pharmaceutical companies?</p> <p>9 A. No, sir.</p> <p>10 Q. All right. After a stint as Division</p> <p>11 Vice President - Finance International, you went</p> <p>12 -- became Divisional Vice President - Corporate</p> <p>13 Planning?</p> <p>14 A. Yes, sir.</p> <p>15 Q. What were your duties there?</p> <p>16 A. The primary duties were product</p> <p>17 acquisition either through purchase or licensing.</p> <p>18 Q. Okay. What -- what -- give me some</p> <p>19 examples of what you did --</p> <p>20 A. Um-hum.</p> <p>21 Q. -- as Corporate Planning product</p> <p>22 acquisition.</p>
<p style="text-align: right;">Page 35</p> <p>1 office and bring it back.</p> <p>2 Q. Was that a cost saving?</p> <p>3 A. A million dollars.</p> <p>4 Q. What else did you do for them?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Well, what else did you do as Division</p> <p>8 Vice President of Finance International?</p> <p>9 A. I was responsible for the accuracy and</p> <p>10 integrity of the books at the -- financial books</p> <p>11 at the division level and each of the hundred</p> <p>12 affiliates.</p> <p>13 Q. And I see that during this period of</p> <p>14 time you also became a CPA?</p> <p>15 A. Yes, sir. Well, I was a CPA before I</p> <p>16 went to International.</p> <p>17 Q. I see. That's correct. Are you</p> <p>18 currently a CPA?</p> <p>19 A. I am a retired CPA.</p> <p>20 Q. Okay, are you -- are you doing any kind</p> <p>21 of work presently?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 37</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: You may answer if you can.</p> <p>3 THE WITNESS: Okay. I had -- let's</p> <p>4 back up.</p> <p>5 Our job was to analyze business areas</p> <p>6 we were not in to see if they would fit with the</p> <p>7 overall Abbott portfolio and to find products at</p> <p>8 small companies generally that would be licensed</p> <p>9 that would complement Abbott's existing strengths</p> <p>10 in its product portfolio.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. You were looking to license products</p> <p>13 developed by others?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Would that include looking for products</p> <p>16 that had been patented by other companies?</p> <p>17 A. Yes.</p> <p>18 Q. Would it include products that had been</p> <p>19 patented by other institutions, say,</p> <p>20 universities?</p> <p>21 A. Yes.</p> <p>22 Q. This is something I guess you did for a</p>

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<p style="text-align: right;">Page 38</p> <p>1 couple of years?</p> <p>2 A. Yes.</p> <p>3 Q. In your -- in this position, about how</p> <p>4 many products did you license from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Other institutions?</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Universities, other companies.</p> <p>10 A. Oh.</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Let me -- let me rephrase the question.</p> <p>14 You've testified that as part of your</p> <p>15 duties, you were looking for a product that may</p> <p>16 have been patented by another company or other</p> <p>17 institutions like a university, correct?</p> <p>18 A. Um-hum.</p> <p>19 Q. Yes?</p> <p>20 A. Yes.</p> <p>21 Q. And my question is, to your best of</p> <p>22 your recollections, how many products did you</p>	<p style="text-align: right;">Page 40</p> <p>1 - as Division Vice President - Corporate Planning</p> <p>2 get involved in the licensing of a product that</p> <p>3 had not been manufactured by Abbott?</p> <p>4 A. Yes.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Could you give me some examples?</p> <p>8 A. Yeah.</p> <p>9 Q. Please for the record give me some</p> <p>10 examples.</p> <p>11 A. There was a product called Synagis</p> <p>12 marketed by Ross Division, which was -- which is,</p> <p>13 I assume -- I don't know about -- it's -- the</p> <p>14 manufacturer's Medimmune.</p> <p>15 Q. Okay, there were others?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. All right. And so my question is with</p> <p>18 respect to your duties at this time as Division</p> <p>19 Vice President of Corporate Planning, you were</p> <p>20 concerned with budgets for acquiring product from</p> <p>21 other companies or institutions and licensing</p> <p>22 them through Abbott; is that accurate?</p>
<p style="text-align: right;">Page 39</p> <p>1 license for Abbott --</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. (Continuing) -- from other</p> <p>5 institutions?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 MR. SOFFER: If you're able, you may</p> <p>8 answer.</p> <p>9 THE WITNESS: Well, let me -- let me</p> <p>10 rephrase, okay?</p> <p>11 We would identify a product either with</p> <p>12 or without a division. Corporate does not market</p> <p>13 -- I guess -- corporate really doesn't market</p> <p>14 products. Divisions sell products at Abbott. So</p> <p>15 -- can I give a real example?</p> <p>16 MR. SOFFER: Why don't we have the</p> <p>17 question asked again.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Well, look, let me ask this.</p> <p>20 MR. SOFFER: Go ahead.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Did Abbott -- did you at this time at -</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I would say that we were</p> <p>3 concerned with licensing products, not budgets.</p> <p>4 Our job was to identify and to assist the</p> <p>5 divisions in licensing or acquiring products. We</p> <p>6 did not have the budgets.</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. Was cost a consideration in that</p> <p>9 process of acquiring those products that you</p> <p>10 would license?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Every -- every product</p> <p>13 had a P & L prepared for it.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. What's --</p> <p>16 A. A profit and loss statement when you</p> <p>17 had -- when you went to license it.</p> <p>18 Q. All right, thereafter, you went to --</p> <p>19 by the way, when you were Division Vice President</p> <p>20 of Corporate Planning, who was your immediate</p> <p>21 supervisor?</p> <p>22 A. During the period of time I was there,</p>

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<p>1 I had two supervisors. 2 Q. And who were they? 3 A. Dick Moorehead -- Richard Moorehead. 4 Q. Who else? 5 A. Steve Weiger. 6 Q. What was Moorehead's position? 7 A. He -- 8 MS. TABACCHI: Object to the form. 9 MR. SOFFER: You can answer. 10 THE WITNESS: He was Vice President - 11 Corporate Strategic Planning. That title may not 12 be a hundred percent accurate. 13 BY MR. SISNEROS: 14 Q. Okay, how about Mr. Weiger? 15 A. Same title basically. 16 Q. Mr. Weiger had the same title? 17 A. (Witness nodding.) Mr. Moorehead 18 retired. 19 Q. Okay, and who was Weiger's supervisor? 20 A. Gary Coughlin. 21 Q. And what was Coughlin's -- 22 A. Chief Financial Officer.</p>	<p>1 Q. When did you develop that program? 2 A. We bought it. Well, you've heard of 3 SAP? 4 Q. No, I haven't. 5 A. Okay. 6 Q. What is SAP? 7 A. SAP is a German software company, 8 Systems Application and Programming. It's a big 9 ER -- what's called enterprise related -- ERP 10 software. 11 Q. When did you buy this for Abbott? 12 A. In 1999, 2000, somewhere in that time 13 frame. 14 Q. When was it implemented for customers 15 to use this service? 16 MS. TABACCHI: Object to the form. 17 BY MR. SISNEROS: 18 Q. When was it implemented so customers 19 could use this software? 20 A. We went -- there was -- it was 21 implemented for the domestic divisions. We 22 started with the Diagnostics Division first.</p>
Page 43	Page 45
<p>1 Q. Who was Coughlin's boss? 2 A. CEO. 3 Q. '96 through '98, who would have been 4 the CEO? 5 A. There was a change in there. I'm not 6 positive. 7 Q. Well, who were the two? 8 A. Dwayne Burnham. 9 Q. And the other one? 10 A. Miles White. 11 Q. All right, thereafter, you went to 12 Division Vice President of E-Commerce from 1998 13 until you -- your retirement in 2003, correct? 14 A. Correct. 15 Q. And what were your duties there? 16 A. The primary duty was I installed a new 17 order entry system for Abbott in the U.S. 18 Q. Order entry system, what is that? 19 A. It's what -- it's the computer software 20 that accepts customers' inventory -- customers' 21 orders, signs inventory, and then fulfills that 22 request.</p>	<p>1 Q. When? 2 A. It would have been two thousand and -- 3 2001. 4 Q. To the best of your recollection, when 5 did the Hospital Products Division get onboard 6 with this program? 7 A. 2002. 8 Q. Is the program one that is accessible 9 to your -- to Abbott customers? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: Define "accessible." 12 BY MR. SISNEROS: 13 Q. If a customer wants to order product, 14 can they do it online through this program? 15 MS. TABACCHI: Object to the form. 16 MR. SOFFER: You may answer, if you 17 can. 18 THE WITNESS: Hospital Products' 19 products cannot. 20 BY MR. SISNEROS: 21 Q. Who -- what customers -- I understood 22 that you said that this was something that was</p>

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<p style="text-align: right;">Page 46</p> <p>1 implemented so that customers could order 2 product. How do they do that? 3 A. The Diagnostics -- well, you can do it 4 via EDI, electronic data interchange, you can do 5 it via calling or, in some divisions, you can do 6 it via the Internet. 7 Q. But -- okay, but Hospital Products 8 Division did not -- never had access through the 9 Internet? 10 A. No. 11 Q. Okay. So I -- excuse me, let me 12 rephrase the question. 13 Customers of the Hospital Products 14 Division could not order their product through 15 this program? 16 A. They had to call in their orders or 17 they had to place them via EDI. 18 Q. I see. Okay. All right, I want to 19 change focus now from -- from your employment 20 history a bit, and I wanted to ask you that -- or 21 mark as Exhibit Miller 1161 -- 22 (Exhibit Miller 1161 was marked</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. TABACCHI: Object to the form. 2 BY MR. SISNEROS: 3 Q. (Continuing) -- or this lawsuit? Were 4 you aware of this lawsuit? 5 MS. TABACCHI: Object to the form. 6 MR. SOFFER: Objection. 7 What period of time was he aware? 8 BY MR. SISNEROS: 9 Q. Well, before this deposition, were you 10 -- before you were noticed for this deposition, 11 were you aware that Abbott was being sued by 12 various government agencies? 13 MS. TABACCHI: Object to the form. 14 MR. SOFFER: You may answer if you can. 15 THE WITNESS: Until I got a call from 16 the Abbott Legal Department, no. 17 BY MR. SISNEROS: 18 Q. When did you get a call from the Abbott 19 Legal Department? 20 A. The last 60 days sometime. 21 Q. Okay, in the last couple months? 22 A. Yeah.</p>
<p style="text-align: right;">Page 47</p> <p>1 for ID) 2 BY MR. SISNEROS: 3 Q. All right, I've had marked and 4 identified as Exhibit Miller 1161 to your 5 deposition a copy of a subpoena duces tecum that 6 was attached to your notice of deposition. 7 Have you seen that document before? 8 A. Yes, my lawyers provided it to me. 9 Q. Did you provide any documents to your 10 attorneys pursuant to that subpoena? 11 A. Only the resume. 12 Q. Okay. Did you make a search for 13 documents pursuant to that subpoena? 14 A. Yes, sir. 15 Q. And the only document you found was 16 your resume? 17 A. Yes, sir. 18 Q. Okay. Now, other than your attorneys, 19 did you speak to anyone about your deposition 20 here today? 21 A. No. 22 Q. Were you aware of this litigation --</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. All right, okay. 2 All right, I want to now again shift 3 over and I want to turn your attention to the 4 period of time when you were Division Vice 5 President of Corporate Planning. Have you heard 6 of the Medicare Working Group? 7 A. Yes. 8 Q. What is it? 9 A. The Medicare Working Group was a -- 10 it's called a working group of personnel from the 11 divisions and interested corporate functions on 12 product reimbursement. 13 Q. How was this group created? 14 A. I was asked by Mr. Moorehead to call a 15 meeting. 16 Q. And Mr. Moorehead was your direct 17 supervisor -- 18 A. Yes, sir. 19 Q. -- Vice President of Corporate 20 Strategic Planning? 21 A. (Witness nodding.) 22 Q. Yes?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And what were Mr. Moorehead's</p> <p>3 instructions to you?</p> <p>4 A. I do not recall specifically, but it</p> <p>5 was generally to call a meeting of these people</p> <p>6 who were responsible for I'm going to call it</p> <p>7 insurance coverage in the divisions and certain</p> <p>8 corporate functions that were interested.</p> <p>9 MR. SOFFER: Why don't we have a break</p> <p>10 now?</p> <p>11 MR. SISNEROS: Okay.</p> <p>12 THE WITNESS: Okay.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record at 9:56 a.m.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 10:08 a.m.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. Mr. Miller, I'm going to have the court</p> <p>20 reporter read off a couple of questions and</p> <p>21 answers just before we took the first break</p> <p>22 because I want to follow up with some questions</p>	<p style="text-align: right;">Page 52</p> <p>1 why you were asked to create this group?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No. I'd be guessing.</p> <p>4 MR. SISNEROS: Don't guess.</p> <p>5 (Exhibit Miller 1162 was marked</p> <p>6 for ID)</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. I'm handing you what I've marked and</p> <p>9 identified as Exhibit Miller 1162 to your</p> <p>10 deposition, pages 1 and 2, and these are two</p> <p>11 lists.</p> <p>12 Are -- if you could take a moment and</p> <p>13 review both lists?</p> <p>14 A. (Witness reviewing document.)</p> <p>15 Okay.</p> <p>16 Q. Have you had a chance to review both</p> <p>17 lists, Mr. Miller?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right, the first page of Exhibit</p> <p>20 Miller 1162 is entitled, "Abbott's Medicare</p> <p>21 Working Group Key Participants." Do you see</p> <p>22 that?</p>
<p style="text-align: right;">Page 51</p> <p>1 to your response.</p> <p>2 (Record read as follows:</p> <p>3 Q. Have you heard of the Medicare Working</p> <p>4 Group?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. The Medicare Working Group was a --</p> <p>8 it's called a working group of personnel from the</p> <p>9 divisions and interested corporate functions on</p> <p>10 product reimbursement.")</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Mr. Miller, what did you mean by the</p> <p>13 words "interested corporate functions on product</p> <p>14 reimbursement"?</p> <p>15 A. The corporate groups that I remember</p> <p>16 attending via person or in phone was Public</p> <p>17 Affairs and the Washington office and, obviously,</p> <p>18 my department.</p> <p>19 Q. If you know, is there a reason why Mr.</p> <p>20 Moorehead asked you to create this group?</p> <p>21 A. I do not remember a specific reason.</p> <p>22 Q. Do you have a general recollection of</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Yes, sir.</p> <p>2 Q. And then the second list is entitled,</p> <p>3 "Abbott's Medicare Working Group Distribution</p> <p>4 List;" is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it appears to me that in both lists</p> <p>7 it's the same group of individuals. Is that</p> <p>8 correct?</p> <p>9 A. There's sixteen names on both pages.</p> <p>10 Q. The difference between page 1 and page</p> <p>11 2 is that it identifies each of the individuals -</p> <p>12 - or strike that.</p> <p>13 Page 1 of the exhibit identifies the</p> <p>14 division from which those individuals come from;</p> <p>15 is that correct?</p> <p>16 A. Division and corporate function.</p> <p>17 Q. That's correct. Now, who was</p> <p>18 responsible for the individuals that composed the</p> <p>19 Medicare working group?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. All right, let me try it a different</p>

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<p style="text-align: right;">Page 54</p> <p>1 way. Who picked the members of the Medicare 2 Working Group? 3 A. The initial participants were suggested 4 by Mr. Moorehead. 5 Q. And the individuals that are listed in 6 Exhibit Miller 1162, are those the individuals 7 that were suggested by Mr. Moorehead? 8 A. I do not remember. 9 Q. Are some of the individuals that are to 10 be found on the list of Exhibit Miller 1162 some 11 of the individuals that Mr. Moorehead suggested? 12 A. Yes. 13 Q. What individuals are those? 14 A. I cannot answer with total accuracy. 15 Q. To the best of your recollection. 16 A. I mean there are people -- I don't 17 know. I mean ADD, Paul Landauer had -- well, I'm 18 not -- I'm not sure who was on the original list. 19 I mean that's ten years ago, guys. 20 Q. From the best of your recollection, 21 were most of the individuals that Moorehead 22 suggested to you in fact the members of the</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Knowledgeable. 3 BY MR. SISNEROS: 4 Q. Knowledgeable on reimbursement issues 5 in their division? 6 A. Yes. 7 Q. Since your name is on this list, then 8 you are an individual that is knowledgeable on 9 reimbursement issues? 10 A. No, sir. 11 Q. Why are you here? 12 A. I was assigned a coordination role. 13 Q. And what -- in coordination role, what 14 were your responsibilities? 15 A. To get the individuals together for a 16 one-hour meeting once a month. 17 Q. To discuss reimbursement? 18 A. To discuss -- 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: To discuss coverage 21 issues for their products. I'm going to 22 interchange "reimbursement" and "coverage" as the</p>
<p style="text-align: right;">Page 55</p> <p>1 Medicare Working Group? 2 A. I remember there were people that 3 showed up for the initial meetings that said, 4 "Why am I here?" 5 Q. When was that initial meeting? 6 A. It would have to be in the fall of '96. 7 Q. August, September, October, November of 8 '96? 9 A. Somewhere after I was there. 10 MS. TABACCHI: Object to form. 11 BY MR. SISNEROS: 12 Q. And when these individuals asked, "Why 13 am I here," what did you tell them? 14 A. "It's a working group to share 15 information on the reimbursement products. If 16 you're responsible for that, you belong here. If 17 you're not responsible for that, give me a name." 18 Q. So at least in the -- in identifying 19 the members that were to be on the Medicare 20 Working Group, they were to be individuals that 21 were responsible for reimbursement issues in 22 their division?</p>	<p style="text-align: right;">Page 57</p> <p>1 same word. 2 BY MR. SISNEROS: 3 Q. Okay. And "coverage," you mean 4 coverage by third-party payers? 5 A. Any third-party payer. 6 Q. Private health insurance? 7 A. Hospitals, yeah, right. 8 Q. Medicare/Medicaid? 9 A. Any third-party payer. 10 Q. Including Medicare and Medicaid? 11 A. Yes, sir. 12 Q. All right. Was Rich Rieger someone who 13 was knowledgeable in reimbursement? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: I do not believe so. 16 BY MR. SISNEROS: 17 Q. How about Cathy Babington? 18 A. I do not believe so. 19 Q. Hank Doyle? 20 A. I do not believe so. 21 Q. Don Buell? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 58</p> <p>1 THE WITNESS: I'm not qualified to 2 answer on these individuals, what their specific 3 knowledge levels are. 4 BY MR. SISNEROS: 5 Q. Based on your experience in working 6 with -- by the way, how long did you work with 7 these folks on the Medicare Working Group? 8 A. I believe -- 9 MS. TABACCHI: Object to the form. 10 BY MR. SISNEROS: 11 Q. All right, let me ask it this way. How 12 long did the Medicare Working Group exist? 13 A. I believe it existed through the end of 14 '97. 15 Q. So its existence basically was for one 16 year? 17 A. Yeah. 18 Q. What changed that became defunct? 19 MS. TABACCHI: Object to the form. 20 BY MR. SISNEROS: 21 Q. Well, let me try another way. What 22 change -- what event led to the group disbanding?</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I'm an operational 3 efficiency expert. 4 BY MR. SISNEROS: 5 Q. And what's that? 6 A. I did a lot of -- in my job, I look at 7 how you make organizations more efficient, okay? 8 That's part of the budgeting management -- 9 management of the budgeting process at Abbott. 10 Q. When you say "make things more 11 efficient," are you talking about financial-wise? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Organization. 14 BY MR. SISNEROS: 15 Q. Organizational-wise? 16 A. (Witness nodding.) 17 Q. So this Medicare Working Group -- or 18 are you saying that this Medicare Working Group 19 was an experiment at efficiency? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I don't know what was in 22 management's mind when they assigned the task.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. It was not in one of the top five 2 priorities for my organization. So I assume it 3 fell by the way side. 4 Q. Well, does that mean when this group 5 was created, it was one of the top five 6 priorities for your -- for your division? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: I cannot answer that. It 9 was an assignment from my boss. The -- 10 BY MR. SISNEROS: 11 Q. So in the course -- in the course of 12 your one-year participation -- 13 A. Um-hum. 14 Q. -- with the Medicare Working Group, was 15 it ever clear to you why this group was created? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I'd be guessing. 18 BY MR. SISNEROS: 19 Q. I'm not asking you to guess. Based -- 20 I'm asking you, based on your 30 years of 21 experience at Abbott, you know, did you ever have 22 an understanding why this group was created?</p>	<p style="text-align: right;">Page 61</p> <p>1 BY MR. SISNEROS: 2 Q. What was in your mind? What did you 3 think? 4 A. I went out and looked at the processes 5 for getting products reimbursed in the various 6 divisions or getting insurance coverage for the 7 various products in the divisions. 8 Q. How did you do that? 9 A. By asking questions like you're doing. 10 Q. Okay. What questions did you ask and 11 what did you learn? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I learned that products 14 of the divisions have very little similarities in 15 how they are approved or reimbursed. 16 BY MR. SISNEROS: 17 Q. With respect to the Hospital Products 18 Division, what did you learn about how their 19 products were reimbursed? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: In that time frame, the 22 majority, vast majority of their products were</p>

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<p style="text-align: right;">Page 62</p> <p>1 sold directly to hospitals on contract. 2 BY MR. SISNEROS: 3 Q. With regard to their product that was 4 not sold to hospital, what did you learn about 5 reimbursement of those products? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: I don't -- nothing that I 8 recall. 9 BY MR. SISNEROS: 10 Q. Okay, all right. Prior to the creation 11 of the Medicare Working Group, was there some 12 mechanism at Abbott to deal with the type of 13 issues that you dealt with in the Medicare 14 Working Group? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: I -- I'm not qualified to 17 answer. I wasn't at the corporate level. 18 BY MR. SISNEROS: 19 Q. You were at the corporate level when 20 this was formed, correct? 21 A. Yes, sir. 22 Q. How long had you been at the corporate</p>	<p style="text-align: right;">Page 64</p> <p>1 proposed changes during those years. 2 BY MR. SISNEROS: 3 Q. Proposed changes to the Medicare 4 program? 5 A. To state programs, Medicare programs. 6 Q. Okay. This was -- I'm sorry, let me -- 7 let me look at this. 8 This was around the '96, '98 time 9 period? Well, '96, '97 you said earlier, 10 correct? 11 A. Yes. 12 Q. That was the Clinton presidency. 13 Clinton was President at the time, correct? 14 A. He served two terms, yes. 15 Q. He had two terms. And it was around 16 that time, I believe, that -- that Hilary Clinton 17 was proposing sweeping changes to the healthcare 18 program; is that correct? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Your memory's better than 21 mine. 22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 63</p> <p>1 level when this was formed? 2 A. 30 days, 60 days. 3 Q. This was one of your first assignments? 4 A. Yes, sir. 5 Q. Did you ever do any other -- did you 6 have other types of assignments similar to this 7 where you were part of a working group, perhaps 8 other issues? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: They would have been more 11 business or financial related. This is about as 12 far afield as I ever worked. 13 BY MR. SISNEROS: 14 Q. Okay. Now, just so I'm clear, with 15 respect to the reimbursement issues, what we -- 16 what your discussion in this group was was about 17 the reimbursement to the third-party payers? 18 A. Yes, sir. 19 Q. Why were you looking at issues 20 regarding reimbursement to third-party payers? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: There were a lot of</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Well, there was some Medicare proposals 2 that was put forward by the Clinton 3 administration? Do you remember that? 4 A. Yes. 5 Q. Was -- were at least -- were some of 6 those proposals on the table at the time this 7 Medicare Working Group was formed? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I do not remember. 10 BY MR. SISNEROS: 11 Q. You do not recall? 12 A. (Witness shaking head.) 13 Q. Do you recall any discussion within the 14 Medicare Working Group regarding proposals at -- 15 on the table and before state legislatures and 16 the federal legislature regarding changes to 17 Medicaid or Medicare? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I do not recall the 20 specifics of discussions ten years ago. 21 BY MR. SISNEROS: 22 Q. Okay, all right. You were the person</p>

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<p style="text-align: right;">Page 66</p> <p>1 primarily responsible to make -- for keeping the 2 Working Group moving along, working? 3 A. It was called the information sharing 4 of the Working Group. 5 Q. The what? 6 A. Information sharing. 7 Q. Okay, you were responsible for 8 information sharing? 9 A. (Witness nodding.) 10 Q. What kind of information would you be 11 sharing? 12 A. A person could come in and say, Senator 13 so and so has a proposal to do X, Y and Z in 14 Congress. The Washington office could say that. 15 Q. And you'd be the contact person? 16 A. No, we'd all be in a room. 17 Q. Oh, I see. 18 A. See, the Washington office would be on 19 the phone, and they might say, you know, Senator 20 -- Senator Clinton. We're going to make Hilary a 21 senator back then. Senator Clinton has a 22 proposal to do this, to pricing or to</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. But -- but in terms of what had been 2 identified as the key participants of the 3 Medicare Working Group, those three were part of 4 it? 5 A. The Washington office was a key 6 participant. 7 Q. Okay. And so with -- in the context of 8 the Washington office, they would keep the 9 Medicare Working Group informed as to any pending 10 proposals to change the Medicare or Medicaid 11 systems? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Yes, sir. 14 BY MR. SISNEROS: 15 Q. So the -- Abbott's Washington office 16 would pass on to the Medicare Working Group any 17 pending legislation regarding Medicare -- 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Yes, sir. 20 BY MR. SISNEROS: 21 Q. (Continuing) -- or Medicaid? 22 A. Yes, sir.</p>
<p style="text-align: right;">Page 67</p> <p>1 reimbursement, to coverage, however you want to 2 use the words. 3 Q. And the example you've given, the 4 hypothetical you've given, that makes sense 5 because you've testified before that the 6 Washington -- Abbott's Washington office made -- 7 were some of the members of this Working Group, 8 correct? 9 A. Yes, sir. 10 Q. And that would be Cindy Sensibaugh, 11 David Landsidle and Rosemary Haas -- 12 MS. TABACCHI: Object to the form. 13 BY MR. SISNEROS: 14 Q. -- is that right? 15 A. Those are members of the Washington 16 office, yes. 17 Q. And they were part of the Medicare 18 Working Group? 19 A. Yeah. Who was on the phone, again, I 20 do not remember ten years ago. 21 Q. No, I understand. 22 A. Okay.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. All right. Now, were minutes kept of 2 the Medicare Working Group meetings? 3 A. To the best of my knowledge, minutes 4 were issued for every meeting. 5 Q. Did you take down, write down the 6 minutes or take them down yourself? 7 MS. TABACCHI: Object to the form. 8 BY MR. SISNEROS: 9 Q. I'll just ask it this way. Strike the 10 question. 11 Who was responsible for the minutes of 12 the Medicare Working Group meetings? 13 A. Generally, it would have been Rich 14 Rieger. 15 (Exhibit Miller 1163 was marked 16 for ID) 17 BY MR. SISNEROS: 18 Q. Okay, Mr. Miller, I'm handing you a 19 packet of documents which have been marked and 20 identified as Exhibit Miller 1163 to your 21 deposition, and I'd like for you to take a moment 22 to review those documents.</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. (Witness reviewing document.)</p> <p>2 Q. Mr. Miller, have you had an opportunity</p> <p>3 to review the 11 -- Exhibit Miller 1163?</p> <p>4 A. Yes, sir.</p> <p>5 Q. All right, just a housecleaning matter,</p> <p>6 I need for you to confirm that Exhibit Miller</p> <p>7 1163 consists of five pages. Is that correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And the documents, each page is Bates</p> <p>10 stamped. And for the record, there are two Bates</p> <p>11 stamps, one starting ABT and the other one TX</p> <p>12 ABT.</p> <p>13 Starting with the ABT Bates stamp, the</p> <p>14 Exhibit Miller 1163 is ABT 52840, 41, 42, 52898</p> <p>15 and 52899; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. All right. Now, starting at -- with</p> <p>18 the first page of that exhibit, ABT 52840, this</p> <p>19 is an e-mail from Richard Rieger to -- and it's</p> <p>20 addressed to the distribution list, Medicare</p> <p>21 Working Group minute meetings of March 6th, 1997;</p> <p>22 is that correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 the participants in the Medicare Working Group;</p> <p>2 is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And in Mr. Rieger's memo of March 7th,</p> <p>5 1997 to the Medicare Working Group, he states in</p> <p>6 there that you drafted the minutes of the March</p> <p>7 6th, 1997 meeting due to his absence; is that</p> <p>8 correct?</p> <p>9 A. That's what it says.</p> <p>10 Q. And then if you look at the second page</p> <p>11 of it, Exhibit Miller 1163, having Bates stamp</p> <p>12 ABT 52841 is a draft memo from you dated March</p> <p>13 7th, 1997 addressed to the distribution list</p> <p>14 regarding the Medicare Working Group meeting</p> <p>15 minutes of March 6th, 1997; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. Is this the memo that -- that -- are</p> <p>18 these the minutes that you prepared in memo form</p> <p>19 for the March 7th, 1997 Medicare Working Group</p> <p>20 meeting?</p> <p>21 A. No.</p> <p>22 Q. No?</p>
<p style="text-align: right;">Page 71</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. Previously, we had an exhibit where it</p> <p>5 was Exhibit Miller 1162, which should be in front</p> <p>6 of you, and if you'd look at the second page of</p> <p>7 Exhibit Miller 1162, at the top, it's "Abbott's</p> <p>8 Medicare Working Group distribution list."</p> <p>9 Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And your name is on that distribution</p> <p>12 list; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you -- is it your -- do you expect</p> <p>15 that you received this memo from Mr. Rieger dated</p> <p>16 March the 7th, 1997 with the minutes of the March</p> <p>17 6th, 1997 meeting?</p> <p>18 A. Yes.</p> <p>19 Q. Was -- was Mr. Rieger someone who you</p> <p>20 supervised?</p> <p>21 A. Yes.</p> <p>22 Q. And he -- he is identified as one of</p>	<p style="text-align: right;">Page 73</p> <p>1 A. It's March 6th.</p> <p>2 Q. I'm sorry. You are correct. So -- but</p> <p>3 these are the ones that you produced?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. You've highlighted three points.</p> <p>6 You've got three bullet points, sir, highlighting</p> <p>7 at least some of the discussion in the meeting,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And one of the -- one of the bullets</p> <p>11 entitled -- the first bullet is entitled,</p> <p>12 "Changing reimbursement price for drugs</p> <p>13 administered in physician's office from AWP."</p> <p>14 Do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And when you -- when you reference in</p> <p>17 there -- when you wrote in there "a change in</p> <p>18 reimbursement price," you meant -- you meant any</p> <p>19 proposals before Congress or State Houses that</p> <p>20 would change the reimbursement method for drugs</p> <p>21 administered in a physician's office; is that</p> <p>22 correct?</p>

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<p style="text-align: right;">Page 74</p> <p>1 MS. TABACCHI: Object to the form. 2 BY MR. SISNEROS: 3 Q. Well, let me ask you this. When you 4 wrote down "changing reimbursement price for 5 drugs administered in physician's office from 6 AWP," what did you mean? 7 A. It was a discussion of a change in the 8 methodology for reimbursement of drugs 9 administered in the physician office. 10 Q. Who was proposing the change? 11 A. Which government agency, I do not 12 remember. 13 Q. But you do remember that it was a 14 proposal from the government? 15 A. Whether it be states or the federal, I 16 do not know. 17 Q. But -- that's okay. 18 A. Okay. 19 Q. But you do recall that there was a 20 proposal to change the reimbursement method by 21 either the state or the federal government or 22 both?</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. TABACCHI: Objection. 2 BY MR. SISNEROS: 3 Q. Is that correct? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: Rephrase, please. 6 BY MR. SISNEROS: 7 Q. Okay. There was some discussion 8 regarding loss to Abbott if this method off 9 reimbursement was made; is that right? 10 A. There was -- 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: There was a 13 quantification of the sales that could be 14 impacted. There's no quantification of the 15 financial impact. 16 BY MR. SISNEROS: 17 Q. Okay. And do you have any recollection 18 now of what that discussion was about the impact 19 on -- on these total number of sales? 20 A. No, sir. 21 Q. All right. The second paragraph under 22 that first bullet -- or strike that.</p>
<p style="text-align: right;">Page 75</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: States or federal 3 government, yes. 4 BY MR. SISNEROS: 5 Q. Okay. Do you recall who at the meeting 6 discussed this issue or brought this issue up or 7 identified this issue? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: No, sir. No. 10 BY MR. SISNEROS: 11 Q. Okay. And under that bullet point of 12 "changing reimbursement," someone identified that 13 Abbott had about almost -- well, 900 million plus 14 of sales which would have been affected by this 15 proposal; is that right? 16 A. Abbott/TAP. 17 Q. I'm sorry, Abbott/TAP, yes, correct. 18 A. Yes, sir. 19 Q. So there was some discussion at least 20 about the financial impact in changing of the 21 reimbursement method for drugs administered in a 22 physician's office, is that --</p>	<p style="text-align: right;">Page 77</p> <p>1 Let's go back to the -- to that -- to 2 the first paragraph under the first bullet. In 3 it, it reads, "Abbott/TAP has approximately 900 4 million plus of sales which would be affected by 5 this proposal. The two largest products are 6 Lupron and Calcijex." 7 Is that correct? Did I read that 8 correctly? 9 A. That is correct. 10 Q. Okay. Then the -- the second paragraph 11 under the first bullet point reads, "The 12 implementation of a rebate system similar to 13 Medicaid was discussed -- discussed as a 14 potential alternative to be put forward. TAP 15 believes that a rebate system would have a larger 16 negative impact on sales than changing to 17 acquisition cost." 18 Did I read that paragraph correctly? 19 A. That's what it says. 20 Q. Okay. With respect to that second 21 paragraph under that first bullet point, does 22 this refresh your recollection that the committee</p>

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<p style="text-align: right;">Page 78</p> <p>1 discussed a rebate system as a potential 2 alternative to be put forward? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: That was TAP's view, not 5 the committee's view. 6 BY MR. SISNEROS: 7 Q. Okay, do you recall why that was TAP's 8 view? 9 A. No, sir. I mean, obviously, it says 10 "would have a larger negative impact." That's 11 what I wrote. 12 Q. So would it be fair to say from your 13 review of your minutes here that there was some 14 discussion about a rebate system? 15 A. There was a mention of a rebate system. 16 I would not call it a discussion. 17 Q. Okay. Now, let's look at the second 18 sentence of the second paragraph under the first 19 bullet point. And it reads, "TAP believes that a 20 rebate system would have a larger negative impact 21 on sales than changing to acquisition cost." 22 Did I read that correctly?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes, sir. 2 Q. Okay, again, directing your attention 3 to the first bullet point in your minutes, 4 "Changing Reimbursement Price," I'd like to go to 5 the last paragraph under that bullet, and I'm 6 going to read it for the record. 7 "The group consensus was that 8 acquisition -- strike that. Let me reread it. 9 "The group consensus was that 10 (acquisition cost plus) would be the least 11 unfavorable alternative to current Abbott/TAP 12 business." 13 Did I read that correctly? 14 A. That's as stated. 15 Q. All right, and your words "group 16 consensus" suggests to you that there was some 17 discussion of acquisition cost plus? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I do not know. 20 BY MR. SISNEROS: 21 Q. I'm sorry? 22 A. I do not know.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes, sir. 2 Q. And would it be fair to -- fair to say 3 that, because you wrote that down, that there was 4 at least a mention or a discussion of 5 reimbursement based on acquisition cost? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: There was a mention of 8 acquisition cost. 9 MR. SISNEROS: All right, we're taking 10 a break now to switch tapes. 11 THE VIDEOGRAPHER: We are off the 12 record at 10:42 a.m. with the end of Tape No. 1. 13 (Recess taken.) 14 THE VIDEOGRAPHER: We are back on the 15 record at 10:52 a.m. with the start of Tape No. 16 2. 17 BY MR. SISNEROS: 18 Q. All right, Mr. Miller, going back to 11 19 -- Exhibit Miller 1163, on the second page Bates 20 numbered ABT 52841, and again, this is your 21 minutes of the March 6th, 1997 Medicare Working 22 Group meeting -- you with me so far?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Based on your years of experience at 2 Abbott, would you have written, "The group 3 consensus was that acquisition cost plus was at 4 least unfavorable" if there had not been 5 discussion? 6 A. Possib -- 7 MS. TABACCHI: Objection. 8 THE WITNESS: Possibly. There are two 9 groups -- two divisions here, groups, divisions, 10 operations. So I may have used "group" to mean 11 two. 12 BY MR. SISNEROS: 13 Q. I don't follow you. Could you -- 14 A. Sure. 15 Q. Could you explain it? 16 A. Sure. Lupron is sold by TAP. Calcijex 17 was sold by Household Products Division. 18 Q. Okay, so when you say, "The group 19 consensus," are you saying that it's possible 20 that you meant TAP only or -- is that what you're 21 saying? 22 A. No, I'm saying it may have meant TAP</p>

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<p style="text-align: right;">Page 82</p> <p>1 and HPD agreed.</p> <p>2 Q. And as to their divisions, acquisition</p> <p>3 cost plus was the least unfavorable?</p> <p>4 A. Yes.</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay, so -- so -- just so I'm clear</p> <p>8 that what your thinking is, is "the group"</p> <p>9 references the HPD and TAP business's divisions?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. So going back to Exhibit Miller 1162,</p> <p>14 which is the list of participants in the Medicare</p> <p>15 Working Group -- do you have that before you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. The -- the members of HPD would have</p> <p>18 been Michael Heggie, Dave Olson, and Ginny</p> <p>19 Tobiason; is that right?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Those are the members of</p> <p>22 the Working Group.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. -- is that right, from TAP? John</p> <p>2 Campbell from TAP; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember meeting him?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Okay, and so getting back to Exhibit</p> <p>7 Miller 1163, on your minutes of March 6th, '97,</p> <p>8 in your -- where you are talking about the group</p> <p>9 consensus regarding acquisition cost plus, the</p> <p>10 individuals that we just discussed from TAP and</p> <p>11 from HPD would have been the individuals that you</p> <p>12 identified as "the group"?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I cannot say that. By MR.</p> <p>15 SISNEROS:</p> <p>16 Q. Well, they would have been from that</p> <p>17 pool of four people; is that right?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I cannot say that -- I</p> <p>20 cannot say they attended this meeting.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Okay. Well --</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. From HPD?</p> <p>3 A. According to this document.</p> <p>4 Q. Do you have any disagreement with this</p> <p>5 document, the way they are identified, in what</p> <p>6 division they're identified?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Some of these people I do</p> <p>9 not recall ever meeting.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Do you remember meeting Michael Heggie?</p> <p>12 A. No.</p> <p>13 Q. Dave Olson?</p> <p>14 A. I -- yes.</p> <p>15 Q. Ginny Tobiason?</p> <p>16 A. Yes.</p> <p>17 Q. All right, then referring again to</p> <p>18 Exhibit Miller 1162, the representative on the</p> <p>19 Medicare Working Group would have been John</p> <p>20 Campbell --</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 85</p> <p>1 A. I do not know.</p> <p>2 Q. You do not know?</p> <p>3 A. No.</p> <p>4 Q. Would there be any basis for you to be</p> <p>5 saying "group consensus" --</p> <p>6 A. I know that there were representatives</p> <p>7 from the two divisions. Who they were, I do not</p> <p>8 know.</p> <p>9 Q. Okay, fair enough. So when -- so when</p> <p>10 you're -- in this paragraph when you use the word</p> <p>11 "group consensus," you are talking about the</p> <p>12 representatives from TAP and the Hospital</p> <p>13 Products Division that would have attended the</p> <p>14 Medicap -- the Medicare Working Group's meeting</p> <p>15 of March 6th, 1997, correct?</p> <p>16 A. That is an accurate representation.</p> <p>17 Q. Okay. All right, back to that -- to</p> <p>18 that -- to your minutes of the March 6th, 1997</p> <p>19 Medicare Working Group meeting. I want to go to</p> <p>20 your third bullet entitled "AMA proposal." Do</p> <p>21 you see that?</p> <p>22 A. Which one?</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. On Exhibit --</p> <p>2 A. Give me --</p> <p>3 Q. Exhibit 63.</p> <p>4 A. What's your lead-in word?</p> <p>5 Q. Oh. So do you see the bullet point?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay.</p> <p>8 A. Okay.</p> <p>9 Q. You know what? I forgot to ask you one</p> <p>10 question. Let me go back to -- to the first</p> <p>11 bullet point.</p> <p>12 On that last paragraph, you put in</p> <p>13 parenthesis the term "acquisition cost plus." Why</p> <p>14 did you do that?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I do not remember.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. Was there a -- well, what does that</p> <p>19 mean?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. What does "acquisition cost plus" mean</p>	<p style="text-align: right;">Page 88</p> <p>1 by that?</p> <p>2 A. No, sir.</p> <p>3 Q. Why -- why was the AMA proposal being</p> <p>4 discussed by the Medicare Working Group?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I recall there was</p> <p>7 discussion, as the memo states, on getting a</p> <p>8 position for Abbott.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Position regarding what?</p> <p>11 A. The AMA proposal.</p> <p>12 Q. Why did you list that the AMA had as a</p> <p>13 priority that the physician act as a patient</p> <p>14 advocate?</p> <p>15 A. That's what the representative from PPD</p> <p>16 put forward.</p> <p>17 Q. Why -- why was the -- why was that of a</p> <p>18 concern to the -- to the representative from PPD?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I don't know if it was a</p> <p>21 concern.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 87</p> <p>1 to you, sir?</p> <p>2 A. As used here, I do not know. I don't</p> <p>3 recall.</p> <p>4 Q. All right. All right, let's go back to</p> <p>5 your third bullet point entitled, "The AMA</p> <p>6 proposal." Do you see that? Do you see that</p> <p>7 bullet?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Underneath it states the</p> <p>10 following: "AMA has three priorities:</p> <p>11 Implementation of prescription plan for fee-for-</p> <p>12 service Medicare, physician as patient advocate,</p> <p>13 continuing funding of U.S. citizens' graduate</p> <p>14 medical education."</p> <p>15 Do you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. With regard to -- well, did</p> <p>18 I read that accurately?</p> <p>19 A. That's as stated.</p> <p>20 Q. As stated, okay. Now, with regard to</p> <p>21 "implementation of prescription plan for fee-for-</p> <p>22 service Medicare," do you recall what you meant</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Okay. All right, turn to the next page</p> <p>2 of that -- of your -- of your minutes of the</p> <p>3 March 6th, '97 Medicare Working Group meeting.</p> <p>4 A. (Witness so doing.)</p> <p>5 Q. The second paragraph under your third</p> <p>6 bullet entitled "AMA proposal" reads as follows:</p> <p>7 "Recommendation is that Abbott continue to attend</p> <p>8 AMA meetings in a low profile status and avoid</p> <p>9 putting forward any Abbott's position."</p> <p>10 Did I read that correctly?</p> <p>11 A. Correct. That's what it states.</p> <p>12 Q. Why was -- why was Abbott trying to</p> <p>13 maintain a low profile with the AMA?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Or, rather, why was Abbott trying to</p> <p>17 maintain a low profile with regards to the AMA's</p> <p>18 proposal for Medicare reform?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I'd be speculating.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Well, you attended these meetings?</p>

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<p style="text-align: right;">Page 90</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I did not attend the AMA 3 meetings. 4 BY MR. SISNEROS: 5 Q. Were you ever informed of what went on 6 -- well, Abbott had representatives at the AMA 7 meeting, correct? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: Yes. 10 BY MR. SISNEROS: 11 Q. They were briefing you as to what was 12 going on at those meetings, correct? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: Correct. 15 BY MR. SISNEROS: 16 Q. So you were aware of the discussions on 17 the AMA Medicare proposals? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Abbott typically takes a 20 low profile on any controversial issue. 21 BY MR. SISNEROS: 22 Q. Why was the AMA proposal for Medicare</p>	<p style="text-align: right;">Page 92</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Our position was to be 3 neutral in relationship to our customers whenever 4 possible. 5 BY MR. SISNEROS: 6 Q. And when you say "to our customers," 7 what customers are you identifying? Who do you 8 mean? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: In this particular case, 11 I'm referring to physicians. They're the 12 prescribers of our products. 13 BY MR. SISNEROS: 14 Q. I believe you just testified that the 15 physicians were in favor of the AMA proposal? 16 A. I did not. 17 MS. TABACCHI: Object to the form. 18 BY MR. SISNEROS: 19 Q. I'm sorry, what is that is that you 20 said? 21 A. I said there were physicians in favor 22 and physicians against.</p>
<p style="text-align: right;">Page 91</p> <p>1 reform controversial? 2 A. There were people that supported both 3 sides. 4 Q. When you say, "There were people who 5 supported both sides," are you talking about 6 people in Abbott's -- Abbott -- Abbott folks? 7 A. Our customers. 8 Q. Okay, give me some examples. 9 A. I'm sure that all the doctors a hundred 10 percent agreed with the AMA proposal. 11 Q. And who would not? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I'm not qualified to 14 answer that. 15 BY MR. SISNEROS: 16 Q. Well, what was your understanding? 17 Because you were being briefed on these -- on 18 those proposals. 19 A. My understanding was there was 20 controversy with the proposal. 21 Q. And with regard to Abbott's interests, 22 where was that controversy?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. I see. And who were physicians who 2 were in favor of the AMA proposal? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I am not qualified to 5 answer to that question. 6 BY MR. SISNEROS: 7 Q. Okay. And further on in that second 8 paragraph under the third bullet, it says that -- 9 that "the recommendation was to avoid putting 10 forward -- forward any of Abbott's positions." 11 Why was that? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Abbott's historical 14 position is that we take a neutral position 15 whenever possible. 16 BY MR. SISNEROS: 17 Q. At this very time, the AMA was seeking 18 Abbott's position? 19 A. I do not know if Abbott ever gave a 20 position to the AMA. 21 Q. Okay, but that wasn't my question. My 22 question was is that the AMA was actually seeking</p>

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<p style="text-align: right;">Page 94</p> <p>1 Abbott's position; is that correct?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I do not know that.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. You do not know that?</p> <p>6 A. No. Only the divisional</p> <p>7 representatives would know that.</p> <p>8 MR. SISNEROS: Okay. All right.</p> <p>9 (Exhibit Miller 1164 was marked</p> <p>10 for ID)</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. All right, I've -- I'm handing you what</p> <p>13 I've marked and identified as Exhibit Miller</p> <p>14 1164, Exhibit Miller 1164 to your deposition.</p> <p>15 Would you take a moment and review it?</p> <p>16 I believe it's about 13 pages.</p> <p>17 MR. HOFFMAN: Thank you.</p> <p>18 MS. TABACCHI: Thank you.</p> <p>19 (Witness reviewing document.)</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Ready to go, Mr. Miller?</p>	<p style="text-align: right;">Page 96</p> <p>1 - about the seventh page from the end. Tell me</p> <p>2 when you're there, please.</p> <p>3 A. I'm there.</p> <p>4 Q. Okay. And that is a memo dated January</p> <p>5 15th, 1997 from Rich -- Richard Rieger to the</p> <p>6 Medicare Working Group; is that correct?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Correct.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. And it's regarding the upcoming meeting</p> <p>11 on January 21st, 1997, Medicare Working Group</p> <p>12 meeting with a proposed agenda; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And this email -- excuse me, this memo</p> <p>15 is directed to you? You're carbon copied on</p> <p>16 that; is that right?</p> <p>17 A. I am cc'd.</p> <p>18 Q. And in the ordinary course of business</p> <p>19 in your years at Abbott, if Mr. Rieger had cc'd</p> <p>20 you a memo, you expect that you would have</p> <p>21 received it?</p> <p>22 A. In the ordinary course, yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay, just for housecleaning purposes,</p> <p>3 I am going to identify Exhibit Miller 1163 by</p> <p>4 Bates stamp numbers, and I'd like for you to</p> <p>5 verify that I've identified it correctly by the</p> <p>6 Bates stamp numbers.</p> <p>7 A. This is Exhibit Miller 1164, sir.</p> <p>8 Q. Oh, it is? Well, thank you for that.</p> <p>9 That's great housecleaning then.</p> <p>10 Okay, with respect to 11 -- Exhibit</p> <p>11 Miller 1164, I'll identify the pages by the ABT</p> <p>12 number, and it is ABT 52705, 52706, 52707, 52710,</p> <p>13 52711, 52712, 52808, 52809, 52810, 52811, 52836,</p> <p>14 52837, 52838.</p> <p>15 Do you have all those pages with you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You -- and that's the total pages</p> <p>18 you've got --</p> <p>19 A. Yes, sir.</p> <p>20 Q. -- for Exhibit Miller 1164?</p> <p>21 All right, I'd like to ask you some</p> <p>22 questions starting at ABT 52808, which is about -</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And was it your practice that when you</p> <p>2 received memos such as this in the ordinary</p> <p>3 course of business, that you would have reviewed</p> <p>4 the memo or read it?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: 52808 and 52809 consists</p> <p>7 of what the email system could have transmitted.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Is that an e-mail?</p> <p>10 A. Well, I call it -- it's -- it's</p> <p>11 internal email, yes.</p> <p>12 Q. This interoffice correspondence was an</p> <p>13 internal email? This was received in email form</p> <p>14 -- format, you're saying?</p> <p>15 A. I wouldn't bet my life on it, but --</p> <p>16 Q. Okay.</p> <p>17 A. -- I think so.</p> <p>18 Q. Well, my question was if you had</p> <p>19 received --</p> <p>20 A. Either hard copy or email, I would have</p> <p>21 typically read this document.</p> <p>22 Q. Okay. And Mr. Rieger is in this -- in</p>

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<p style="text-align: right;">Page 98</p> <p>1 this memo identifying points to be discussed at 2 the next -- or, rather, strike that. 3 He is identifying matters that members 4 want to discuss at the next Medicare Working 5 Group meeting, correct? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: That's as stated. 8 BY MR. SISNEROS: 9 Q. And one of the bullet points that he 10 brings up is they -- someone wants "to discuss 11 average wholesale price versus actual cost 12 issue." 13 Do you see that? 14 A. That is what's stated. 15 Q. Do you know what is meant by "average 16 wholesale price"? 17 A. Do I know what's -- no. 18 Q. You do not know? You never heard that 19 term before? 20 A. I've read the term. 21 MS. TABACCHI: Object to the form. 22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 100</p> <p>1 deposition. 2 Could you please review that? 3 A. (Witness reviewing document.) 4 Q. Have you had a chance to review it? 5 A. Yes. 6 Q. Mr. Miller, that is an undated copy of 7 handwritten notes on what appears to be a pad 8 "From the desk of James E. Miller." Do you see 9 that? 10 A. Correct. 11 Q. Is that -- is that you? 12 A. That's me. 13 Q. And is that your handwriting? 14 A. That is my handwriting. 15 Q. Could you please -- who is it addressed 16 to? 17 A. Rich Rieger. 18 Q. And -- and could you please read into 19 the record what you -- what is -- you've written 20 down in this handwritten message? 21 A. "Medicare allowable equals AWP. 22 Medicare pays physician 80% of Medicare</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. You've read the term? 2 A. (Witness nodding.) 3 Q. What do you mean you've read the term? 4 A. It's in newspapers, it's in magazines. 5 It's a common term. 6 Q. You have no idea how it's defined? 7 A. I've never been responsible for its 8 calculation or setting. 9 Q. Well, no, I understand that. My 10 question is do you know what it is? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: No. 13 In 52706, there is a definition. 14 MR. SISNEROS: We'll get to that in a 15 minute. 16 THE WITNESS: Okay, fine. 17 (Exhibit Miller 1165 was marked 18 for ID) 19 BY MR. SISNEROS: 20 Q. All right, I am handing to you for your 21 review what I've -- what's been marked and 22 identified as Exhibit Miller 1165 to your</p>	<p style="text-align: right;">Page 101</p> <p>1 allowable. AWP's equals acquisition cost plus 20 2 to 25%." 3 Q. And going to that first line where you 4 wrote, "Medicare allowable equals AWP," do you 5 mean by that that that is the amount that 6 Medicare pays or reimburses a provider? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: I have no idea what this 9 buck slip was in relationship to. 10 BY MR. SISNEROS: 11 Q. Well, okay, but that wasn't my question 12 if what you wrote down was in -- what you wrote 13 down was in relationship to. But my question was 14 "Medicare allowable," what does that mean to you? 15 A. It says, "Medicare allowable equals 16 AWP." 17 Q. And this note, it was -- it was 18 directed at Mr. Rieger, who you supervised; is 19 that correct? 20 A. That is correct. 21 Q. Is it fair to say that this was 22 information you were providing him?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A. No.</p> <p>2 Q. No?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. I would say it is information I wanted</p> <p>6 verified.</p> <p>7 Q. Why do you say that?</p> <p>8 A. Why do you say I was providing him</p> <p>9 information?</p> <p>10 Q. Because it's directed to him in your</p> <p>11 note, sir.</p> <p>12 A. Right. But I look at it and say</p> <p>13 somebody gave me this. I gave it to Rich to be a</p> <p>14 verified.</p> <p>15 Q. Okay. So at some point -- and this is</p> <p>16 undated, correct?</p> <p>17 A. It -- there is no date.</p> <p>18 Q. At some point, you had information that</p> <p>19 you believe was provided to you that stated that</p> <p>20 "AWP equalled acquisition cost plus 20 to 25%</p> <p>21 markup," right?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 -- strike that.</p> <p>2 Underneath the first bullet point, the</p> <p>3 products that he's identified, Abbott products</p> <p>4 he's identified for this discussion are "Lupron,</p> <p>5 Medical Nutritionals, Calcijex, and Other Abbott</p> <p>6 Products"; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And Lupron, I believe from your earlier</p> <p>9 testimony, would be TAP?</p> <p>10 A. Correct.</p> <p>11 Q. The Medical Nutritionals, what division</p> <p>12 would that be, if you know?</p> <p>13 A. Ross Laboratories.</p> <p>14 Q. Calcijex?</p> <p>15 A. Hospital Products.</p> <p>16 Q. And do you recall what other Abbott</p> <p>17 products might have been discussed at the January</p> <p>18 21, '97 meeting?</p> <p>19 A. I do not, sir.</p> <p>20 Q. Okay. And then the second bullet point</p> <p>21 is "a review of proposed legislation regardings</p> <p>22 to -- regarding diabetes outpatient self</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. All right, let's go back now to Exhibit</p> <p>2 Miller 1164, to Mr. Rieger's January 15th, 1997</p> <p>3 memo to the Medicare Working Group starting at</p> <p>4 ABT 52808. Are you there, sir?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. Back to the first bullet point.</p> <p>7 Mr. Rieger has identified some areas that -- for</p> <p>8 the agenda -- some topics for the agenda for the</p> <p>9 January 21, 1997 Working Group meeting; is that</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. And one of those is "a discussion of</p> <p>13 the average wholesale price versus the actual</p> <p>14 cost issue." Do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Does that have any meaning to you, that</p> <p>17 bullet point?</p> <p>18 A. No.</p> <p>19 Q. Okay. And underneath that bullet</p> <p>20 point, there has been -- he has identified</p> <p>21 basically four products from Abbott in which this</p> <p>22 item -- this item is of concern -- well, I don't</p>	<p style="text-align: right;">Page 105</p> <p>1 management service."</p> <p>2 Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. All right, so would it be fair to say</p> <p>5 that one of the points of discussion that would</p> <p>6 be brought up before the Medicare Working Group</p> <p>7 was pending legislation?</p> <p>8 MS. TABACCHI: Objection to form.</p> <p>9 (Witness reviewing document.)</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Okay. And, finally, with regard to Mr.</p> <p>13 Rieger's January 15th, 1997 memo to the Medicare</p> <p>14 Working Group, towards the end of that memo, he</p> <p>15 is identifying two attachments for your reading.</p> <p>16 One is a document relating to AWP. Another one</p> <p>17 is President Clinton's expected '98 budget</p> <p>18 proposal.</p> <p>19 Do you see that?</p> <p>20 A. Something's not in order. Blah-blah-</p> <p>21 blah-blah. Here's Clinton's proposal. Oh, wait.</p> <p>22 Q. Actually, I'm just referring to his</p>

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<p style="text-align: right;">Page 106</p> <p>1 memo.</p> <p>2 A. Oh, okay fine.</p> <p>3 Q. Let's go to that paragraph --</p> <p>4 A. Okay.</p> <p>5 Q. -- the last paragraph of ABT 52808.</p> <p>6 In there, Mr. Rieger is telling the</p> <p>7 Medicare Working Group that he is attaching two</p> <p>8 documents, one relating to AWP, and an article</p> <p>9 relating to President Clinton's '98 budget</p> <p>10 proposal; is that right?</p> <p>11 A. That's what it says.</p> <p>12 Q. Okay, and if Mr. -- and earlier, I'd</p> <p>13 asked you if -- in the normal course of business</p> <p>14 if Mr. Rieger sent out a memo such as this to the</p> <p>15 Working Group, including you, you know, would you</p> <p>16 normally have received it, and I believe you</p> <p>17 said, "Yes." Is that right?</p> <p>18 A. That is correct.</p> <p>19 Q. And if he had attached -- if he had</p> <p>20 attachments to his memo, would you normally have</p> <p>21 reviewed them?</p> <p>22 A. It depends on how voluminous they were.</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. And if you could review at the top of</p> <p>4 52810, one of the articles attached by Mr. Rieger</p> <p>5 to his memo, the -- basically what would be the</p> <p>6 second paragraph starting with, "Health News</p> <p>7 Daily via Individual, Inc." Do you see that, the</p> <p>8 beginning of that paragraph?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And it's an introduction paragraph. Do</p> <p>11 you see where they are basically summarizing</p> <p>12 that, "The new Medicare outpatient drug coverage</p> <p>13 be based on actual cost rather than AWP." Do you</p> <p>14 see -- do you see what that mem -- see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay, earlier in your testimony, --</p> <p>17 well, strike that.</p> <p>18 Now, if you go back to ABT 5808, the</p> <p>19 beginning of Mr. Rieger's January 15th, 1997</p> <p>20 memo, and look at the first bullet point there,</p> <p>21 "Discussed average wholesale price versus actual</p> <p>22 cost issue," do you see that?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. I know what you mean. But do you</p> <p>2 believe that -- if you turn over to Page 52810 --</p> <p>3 A. 52810.</p> <p>4 Q. -- which sequentially follows the end</p> <p>5 of his memo, 52809. That's the end of Mr.</p> <p>6 Rieger's memo, and then the attachment is 52810.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And they're talking about "President</p> <p>10 Clinton's expected proposed Medicare outpatient</p> <p>11 drug coverage." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, and if you look at -- just look</p> <p>14 to the next page, that particular article ends at</p> <p>15 52811. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. All right, with -- with respect to the</p> <p>18 two-page article, it would -- the attached</p> <p>19 article would have been only two pages. Was it</p> <p>20 your normal practice to review small articles</p> <p>21 such as that?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you believe that "actual cost" point</p> <p>3 raised in that bullet may reference President</p> <p>4 Clinton's proposal that reimbursement of</p> <p>5 outpatient drugs be based on actual cost rather</p> <p>6 than AWP?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I do not know.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Does reviewing the article in any way</p> <p>11 refresh your recollection about the actual cost</p> <p>12 issue?</p> <p>13 A. I would have read this and said,</p> <p>14 "Actual cost would never be approved."</p> <p>15 Q. Why would you say that?</p> <p>16 A. I spent nine years in manufacturing</p> <p>17 accounting. You can get 40 cost accountants on</p> <p>18 the head of a pin, and they will never agree on</p> <p>19 actual cost.</p> <p>20 Q. Because each one of them would have a</p> <p>21 different definition for --</p> <p>22 A. Yes, sir.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. -- actual cost?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Well, that's interesting because in</p> <p>4 that Exhibit number -- that last one I had,</p> <p>5 Exhibit Miller 1165, can you turn to that?</p> <p>6 A. Exhibit Miller 1165? Which is Exhibit</p> <p>7 Miller 1165?</p> <p>8 Q. It's your handwritten note to Rich</p> <p>9 Rieger on AWP.</p> <p>10 A. Um-hum.</p> <p>11 Q. Do you see that last line, "AWP equal</p> <p>12 acquisition cost plus a markup of 20 to 25%"?</p> <p>13 A. Right.</p> <p>14 Q. Although we're uncertain where that</p> <p>15 information came from, at least that would be one</p> <p>16 of the viewpoints an accountant might have about</p> <p>17 the relationship of acquisition cost to AWP?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: No, no, no. You're</p> <p>20 changing the words. Actual cost and acquisition</p> <p>21 cost are not synonymous.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 112</p> <p>1 the purpose of the Medicare Working Group was.</p> <p>2 A. (Witness nodding.)</p> <p>3 Q. Remember that?</p> <p>4 A. Yes.</p> <p>5 Q. And do you -- and do you recall that</p> <p>6 you testified, you said you folks -- that you</p> <p>7 folks were looking at how third-party payers were</p> <p>8 being paid -- were being reimbursed?</p> <p>9 MS. TABACCHI: Object to the --</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Is that accurate?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. Or at least -- strike it.</p> <p>15 Was one of the things your group was</p> <p>16 looking at was how third-party payers were being</p> <p>17 reimbursed?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: We were updated, as I</p> <p>20 stated earlier, on proposed pending legislation</p> <p>21 in the federal government or the states.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. What's the difference?</p> <p>2 A. Acquisition cost could be defined as</p> <p>3 what somebody paid for a service or product.</p> <p>4 Actual cost is something that is only calculated,</p> <p>5 in my understanding, for somebody like the IRS in</p> <p>6 a tax suit.</p> <p>7 Q. Okay, well, let's talk about</p> <p>8 acquisition cost in your handwritten notes on</p> <p>9 Exhibit Miller 1165.</p> <p>10 With regard to your last line there,</p> <p>11 "AWP equals acquisition cost plus a markup of 20</p> <p>12 to 25%," would "acquisition cost" in that context</p> <p>13 reference what one of your customers bought the</p> <p>14 product for?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I do not know. Someone</p> <p>17 gave me that information. Who at Abbott, I do</p> <p>18 not recall.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Well, let me ask you -- let me ask you</p> <p>21 this, and this is backing off a little bit.</p> <p>22 Earlier, you gave testimony about generally what</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Concerning reimbursement?</p> <p>2 A. Concerning financial coverage of</p> <p>3 products.</p> <p>4 Q. Okay, and I think you testified earlier</p> <p>5 that when you say "financial coverage of</p> <p>6 products," it would be another word for the word</p> <p>7 "reimbursement"?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: But not specific product</p> <p>10 pricing.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. You were interested in the formula? -</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. (Continuing)-- for reimbursement?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I don't know if I can</p> <p>18 answer that.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Well, I don't think I understand what</p> <p>21 it is that you were doing.</p> <p>22 How -- I mean I don't understand how</p>

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<p style="text-align: right;">Page 114</p> <p>1 you could -- why were you doing -- looking at the 2 coverage of product to third-party payers? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: Recognize this was a one- 5 hour meeting every six weeks. It wasn't an in- 6 depth study of anything. 7 BY MR. SISNEROS: 8 Q. I understand that. 9 A. Okay. 10 Q. But this was one of your first 11 assignments when you had been promoted -- you had 12 received a promotion -- I think you testified 13 earlier this was 30 days into your new promotion 14 this was laid on your lap; is that right? 15 A. But this didn't -- was not, as I stated 16 earlier, this was not my primary job duties. 17 Q. I understand. But your boss gave you 18 this job, your immediate supervisor; is that 19 right? 20 A. I understand. 21 Q. Okay. And so what I'm trying to 22 identify here is when you say you were looking at</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. All right, now back to Mr. 2 Rieger's memo dated January 15th, 1997 directed 3 to the Medicare Working Group starting at ABT 4 52808. 5 In the second sentence of the last 6 paragraph, he -- it states, "This is in addition 7 to the documents that I previously sent to you on 8 12/20/96 regarding AWP and competitive bidding." 9 Do you see that? 10 A. Yes, sir. 11 Q. So it suggests that the Medicare 12 Working Group was already receiving at least 13 background information of some sort in late 1996; 14 is that right? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: The memo states he mailed 17 something. I don't know. 18 BY MR. SISNEROS: 19 Q. Okay. But that would have been in late 20 '96? 21 A. 12/26, right. 22 Q. Okay, all right. All right, now</p>
<p style="text-align: right;">Page 115</p> <p>1 the coverage of product for third-party payers, 2 what you mean by that. 3 A. We're looking at proposed sweeping 4 changes to reimbursement levels or methodology 5 for products. 6 Q. And to understand the impact of 7 proposed legislation on reimbursement 8 methodology, wouldn't you have to understand the 9 existing methodology of reimbursement? 10 A. That responsibility rests with a 11 division. Divisions market and sell products, not 12 corporate. 13 Q. Now, I understand that, but did you as 14 a member of this Working Group get some type of 15 basic knowledge on how reimbursement worked? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I understand the broad 18 concepts of reimbursement. 19 BY MR. SISNEROS: 20 Q. And would Exhibit Miller 1165 at least 21 demonstrate a concept someone fed to you? 22 A. Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 turning to -- your attention to the same exhibit, 2 Exhibit Miller 1164, at Page 52711. 3 A. Okay. Yes, sir. 4 Q. And this is a -- this is a -- this is a 5 memo from Cynthia Sensibaugh in your Washington 6 office to Mr. Rieger dated January 17th, 1997 7 regarding the Medicare conference call; is that 8 right? 9 A. Yes, sir. 10 Q. And in her -- in her memo, she 11 references two articles that she's included, one 12 of which is an article regarding AWP. 13 If you look at the last sentence of her 14 memo, "Also encloses an article about awp," do 15 you see that? 16 A. Yes, sir. 17 Q. Okay, and then the document following 18 her memo is ABT 52712, while Miss Sensibaugh's 19 memo is ABT 52711. So are you at 712? 20 A. Either one. 21 Q. Okay, at 712. ABT 52712, do you see 22 that?</p>

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<p style="text-align: right;">Page 118</p> <p>1 A. Yes, sir.</p> <p>2 Q. And it's something called "the Pink</p> <p>3 Sheet" where it -- entitled, "AWP overstates</p> <p>4 actual pharmacy invoice cost for brand name drugs</p> <p>5 by average of 18.3% nationwide, HHS IG</p> <p>6 concludes;" and then, "Generic AWP overstates</p> <p>7 costs by 42.5%."</p> <p>8 Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you recall ever seeing this</p> <p>11 document?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Okay. All right, turn to -- to Exhibit</p> <p>16 Miller 1164, same exhibit, to document -- I mean</p> <p>17 to page ABT 52710.</p> <p>18 A. 52710. Yes, sir.</p> <p>19 Q. All right, and you see that is a memo</p> <p>20 from Richard Rieger dated January the 20th, 1997</p> <p>21 and it's addressed to the Medicare Working Group</p> <p>22 and cc'd to you. Do you see that?</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. Did you have any input into "points to</p> <p>3 be discussed" in the Medicare Working Group</p> <p>4 meeting? Did you suggest any points for the</p> <p>5 agenda?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I would have generally</p> <p>8 seen the agendas before they were issued.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Okay. Did you have veto power over the</p> <p>11 setting of an agenda?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Under what circumstances would you veto</p> <p>16 items on an agenda?</p> <p>17 A. We did not allow any specific pricing</p> <p>18 discussions.</p> <p>19 Q. Why not?</p> <p>20 A. We had members from various divisions</p> <p>21 in that room. We didn't allow it.</p> <p>22 Q. Okay, you had members from different</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes, sir.</p> <p>2 Q. And then the body of his memo to</p> <p>3 everyone is just basically a one-liner. It says,</p> <p>4 "F.Y.I. Attached is updated information I</p> <p>5 received from Cindy Sensibaugh in preparation for</p> <p>6 1/21/97 Medicare Working Group."</p> <p>7 Do you see that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And the Bates stamp on Rieger's</p> <p>10 memo of January the 20th is ABT 52710. The Bates</p> <p>11 stamp for Sensibaugh's memo to Rieger is ABT</p> <p>12 52711, correct?</p> <p>13 A. Correct, sir.</p> <p>14 Q. And then the article on AWP from the</p> <p>15 Pink Sheet is ABT 52712; is that right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Now, let's turn back to Mr.</p> <p>18 Rieger's January 15th, 1997 memo. And did you --</p> <p>19 MR. HOFFMAN: Where are we now?</p> <p>20 MR. SISNEROS: Oh, I'm sorry, ABT</p> <p>21 52808.</p> <p>22 MR. HOFFMAN: Okay.</p>	<p style="text-align: right;">Page 121</p> <p>1 divisions, but why wouldn't you allow it?</p> <p>2 Why is it -- why would have different -</p> <p>3 - having members from different divisions</p> <p>4 preclude a discussion of pricing?</p> <p>5 A. We didn't feel it was legally correct.</p> <p>6 Q. Did an attorney tell you that?</p> <p>7 MS. TABACCHI: Object to the form of</p> <p>8 the question.</p> <p>9 And I'm also going to instruct the</p> <p>10 witness not to reveal the substance of any</p> <p>11 communications with counsel.</p> <p>12 THE WITNESS: I refuse -- I'm not going</p> <p>13 to answer.</p> <p>14 MS. TABACCHI: Okay.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Were there any attorneys in the</p> <p>17 Medicare Working Group?</p> <p>18 A. There are none on the distribution</p> <p>19 list.</p> <p>20 Q. I understand, but that's not my</p> <p>21 question. Was there an attorney in the Medicare</p> <p>22 Working Group?</p>

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<p>1 A. I do not recall.</p> <p>2 Q. Did the Medi -- did the Medicare</p> <p>3 Working Group seek the advice of counsel on its</p> <p>4 operations?</p> <p>5 MS. TABACCHI: Object to the form of</p> <p>6 the question.</p> <p>7 I'm going to caution the witness not to</p> <p>8 reveal the substance of any communications --</p> <p>9 THE WITNESS: I'm not going to answer</p> <p>10 that question.</p> <p>11 MR. SISNEROS: I'm not asking for</p> <p>12 communication. I'm just asking whether the</p> <p>13 Medicare Working Group consulted with an attorney</p> <p>14 regarding its work.</p> <p>15 MS. TABACCHI: And I'm just going to</p> <p>16 caution the witness not to --</p> <p>17 MR. SISNEROS: That's a yes or no</p> <p>18 question.</p> <p>19 MS. TABACCHI: I'm just going to</p> <p>20 caution the witness not to reveal the substance</p> <p>21 of any attorney-client communications.</p> <p>22 If the witness has difficulty</p>	<p>1 Again, I'm going to caution the witness</p> <p>2 not to reveal the substance of any communications</p> <p>3 with counsel.</p> <p>4 MR. SISNEROS: And it's a yes or no</p> <p>5 question.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Answer the question, please.</p> <p>8 MR. SOFFER: If you can answer that</p> <p>9 question with a "yes" or a "no," you may do so.</p> <p>10 THE WITNESS: I'm going to say I don't</p> <p>11 know.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. You don't know?</p> <p>14 A. Right. It's ten years ago.</p> <p>15 Q. All right.</p> <p>16 Okay, let's turn over to the beginning</p> <p>17 page of Exhibit Miller 1164 --</p> <p>18 A. Okay.</p> <p>19 Q. -- ABT 52705. You there?</p> <p>20 A. Um-hum.</p> <p>21 Q. And that is a January 29th, 1997 memo</p> <p>22 to the Medicare Working Group from Mr. Rieger; is</p>
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<p>1 navigating this issue, I suggest he consult with</p> <p>2 his counsel.</p> <p>3 THE WITNESS: Let's take a break.</p> <p>4 MR. SISNEROS: I'm sorry?</p> <p>5 THE WITNESS: Let's take a break.</p> <p>6 MR. SISNEROS: Well, it's in the middle</p> <p>7 of a question. It's a yes or no answer.</p> <p>8 Could we have the yes or no answer?</p> <p>9 MS. TABACCHI: It's a difficult</p> <p>10 question, Mr. Sisneros, that you're asking. But</p> <p>11 your question asks both for the -- it could call</p> <p>12 for the substance of a communication.</p> <p>13 MR. SISNEROS: Okay.</p> <p>14 MS. TABACCHI: So it's not an easy</p> <p>15 question to answer.</p> <p>16 MR. SISNEROS: Okay. Well, let me ask</p> <p>17 the question in a way that doesn't ask for</p> <p>18 anything that would have been discussed.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. The question is did the Medicare</p> <p>21 Working Group have an attorney it consulted with?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p>1 that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay, and previously we have identified</p> <p>4 in one of the exhibits who the Medicare Working</p> <p>5 Group was, and that would have included you,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And so in the normal course of</p> <p>9 business, do you expect that you would have</p> <p>10 received this January 29th, 1997 memo from Mr.</p> <p>11 Rieger?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right, and in this memo, Mr. Rieger</p> <p>14 in that first paragraph -- well, let me read the</p> <p>15 first paragraph.</p> <p>16 "Since Medicare seems to be heating up,</p> <p>17 our Working Group seems interested in continuing</p> <p>18 to meet and others are becoming interested in</p> <p>19 what we are doing. Jim and I would like to find</p> <p>20 a way to communicate outside of our Working</p> <p>21 Group. To that end, we are thinking about</p> <p>22 documenting each of our Working Group meetings</p>

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<p style="text-align: right;">Page 126</p> <p>1 via minutes and using this as a communications 2 tool." 3 Did I read that correctly? 4 A. As stated. 5 Q. And the reference to "Jim and I" in 6 that paragraph, he's talking about you? 7 A. Yes, sir. 8 Q. And what he's referencing when he says 9 "Jim and I," he is talking -- he is saying that 10 the two of you are trying to find a way to 11 communicate outside of the Medicare Working 12 Group; is that right? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: Outside of the Medicare 15 Working Group meetings. 16 BY MR. SISNEROS: 17 Q. Okay, when -- you wanted to communicate 18 to who? 19 A. Not everybody was able to attend every 20 meeting. 21 Q. Okay. 22 A. So how did you keep the people informed</p>	<p style="text-align: right;">Page 128</p> <p>1 paragraph. 2 "However, in order to do this 3 effectively, we need your help in making sure 4 that the information that we have captured is 5 accurate. Attached are the minutes from the last 6 meeting based upon the notes that Jim and I took 7 and which we would like you to review. I would 8 appreciate any comments that you can provide, be 9 it errs, omissions, embellishments, points, et 10 cetera. Also if you have any suggestions for an 11 alternative or more efficient way of capturing 12 these communications, I would appreciate that 13 feedback as well." 14 Did I read that correctly? 15 A. As stated. 16 Q. Okay, and consistent with -- with that 17 earlier exhibit of the March minutes, Mr. Rieger 18 is identifying you and he as the ones that were 19 keeping minutes of the meetings, correct? 20 A. Yes, sir. 21 Q. And with respect to the -- excuse me. 22 And with respect to the minutes of the meeting</p>
<p style="text-align: right;">Page 127</p> <p>1 who could not attend the meetings? 2 Q. Well, the sentence says -- starting 3 where it says "Jim and I," it says, "Jim and I 4 would like to find a way to communicate outside 5 of our Working Group." 6 A. He left out "meetings." 7 Q. I'm sorry? 8 A. He left out the word "meetings." If 9 you look, the vehicle of communication that was 10 recommended was the minutes of the meetings. 11 Q. So what you're -- what you and Jim 12 talked about was using the minutes as a 13 communications tool with members within the 14 Medicare Working Group? Is that what you're 15 saying? 16 MS. TABACCHI: Objection. 17 THE WITNESS: Who did not attend the 18 meetings. 19 BY MR. SISNEROS: 20 Q. Who did not attend the meetings. Okay, 21 all right. All right, and then in the second 22 paragraph, he reference -- I'll read the second</p>	<p style="text-align: right;">Page 129</p> <p>1 preceding this January 29th, 1997 date, you and 2 Rieger took minutes of that meeting as well, 3 correct? 4 MS. TABACCHI: Object to the form. 5 (witness reviewing document.) 6 THE WITNESS: I cannot tell you that I 7 was even at the meeting. 8 BY MR. SISNEROS: 9 Q. Well, look at the second page of 10 Exhibit Miller 1164, the page right behind Mr. 11 Rieger's memo. 12 A. Um-hum. 13 Q. Okay, and the Bates stamp on that -- 14 and, by the way, this is Abbott's Bates stamp. 15 This is ABT 52706. Do you see that? 16 A. Yes, sir. 17 Q. And Mr. Rieger, the memo, the page 18 before it is ABT 52705. Do you see that? 19 A. Yes, sir. 20 Q. So the two pages are sequential. You 21 follow me? 22 A. Yes, sir.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. Okay. And 52706 references minutes 2 from Medicare Working Group meeting on 1/21/97. 3 Do you see that? 4 A. 1/21/97? Yes. 5 Q. You see that? It's the page right 6 after Mr. Rieger's memo, sir, the second page. 7 A. Right. 8 Q. Okay, so this exhibit shows that there 9 are minutes for a meeting that occurred January 10 the 21st, 1997, correct? 11 A. Correct. 12 Q. And the first page of Exhibit Miller 13 1164, Mr. Rieger's memo, is dated January the 14 29th, 1997, correct? 15 A. Correct. 16 Q. And -- and that's -- Mr. Rieger's memo 17 is like eight days later after the minutes of the 18 meeting, correct? 19 A. The meeting was the twenty -- yeah. 20 Q. Okay. 21 A. Correct. 22 Q. And in earlier testimony, you've said</p>	<p style="text-align: right;">Page 132</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I do not know. 3 BY MR. SISNEROS: 4 Q. Okay, look at the minutes, the second 5 page of Exhibit Miller 1164, the Bates stamp ABT 6 52706. 7 A. Okay. 8 Q. And look under the heading that says 9 "Average Wholesale Price." Do you see that? 10 A. Yes. 11 Q. Okay, and the first bullet under that 12 heading reads as follows: 13 "Average wholesale price, AWP, is 14 generally based on the manufacturer's price plus 15 a markup of 15 to 20%. The AWP is documented in 16 the Red Book, Blue Book and Medi-Span book and is 17 used by Medicare, Medicaid and commercial 18 insurance carriers to determine reimbursement 19 levels. There is a consensus that the AWP is 20 artificial and that actual acquisition cost would 21 be better. However, it is unclear whether actual 22 acquisition cost can be determined."</p>
<p style="text-align: right;">Page 131</p> <p>1 that you folks met only every four to six weeks, 2 something like that, correct? 3 A. Correct. 4 Q. So when Mr. Rieger is writing to the 5 Medicare Working Group on January the 29th, 1997, 6 and in it -- in that memo, he says, "Attached are 7 the minutes from the last meeting based on the 8 notes that Jim and I took," -- 9 A. Ah, okay. 10 Q. -- chances are that the minutes of 11 January 21st, 1997 are minutes that you and Mr. 12 Rieger took, correct? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: That's what it says. 15 BY MR. SISNEROS: 16 Q. And it's a meeting that you would have 17 attended, correct? 18 A. I cannot testify to that. 19 Q. But based upon Mr. Rieger's memo and 20 the dates of his memo and the dates of the 21 minutes, would it be reasonable that you did 22 attend?</p>	<p style="text-align: right;">Page 133</p> <p>1 Did I read that correctly? 2 A. As stated. 3 Q. Okay. Do you remember earlier I asked 4 you some questions about whether you had veto 5 power over an agenda? 6 A. Yes, sir. 7 Q. With regard to the minutes, before they 8 were disseminated, would you review them? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I may or may not. 11 BY MR. SISNEROS: 12 Q. Now, do you -- do you -- do you have 13 any recollection at any of these Medicare Working 14 Group meetings having a discussion of average 15 wholesale price? 16 A. As it relates to what? 17 Q. In any context. 18 A. Well, if we disseminated these Pink 19 Sheets and these other articles, there would have 20 been some discussion. 21 Q. Well, with respect to that heading, 22 "Average Wholesale Price" in the minutes of</p>

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<p style="text-align: right;">Page 134</p> <p>1 1/21/97 and that first bullet point, had you ever 2 heard that average wholesale price was generally 3 based on the manufacturer's price plus a markup 4 of 15 to 20%? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I don't know where -- I 7 mean if I look at my handwritten note, it says 8 "acquisition cost." This says "manufacturer's 9 price." 10 BY MR. SISNEROS: 11 Q. That's correct. In your way of 12 thinking, is -- are those two -- are those two 13 different measures? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: Yes. 16 BY MR. SISNEROS: 17 Q. Explain the difference between one and 18 the other. 19 A. You could define acquisition cost to 20 include the marketing, selling, R & D costs of 21 the company. 22 Q. Okay, and how is that?</p>	<p style="text-align: right;">Page 136</p> <p>1 of that first bullet point under "Average 2 Wholesale Price." 3 "The AWP is documented in Red Book, 4 Blue Book and Medi-Span book and is used by 5 Medicare Medicaid and commercial insurance 6 carriers to determine reimbursement levels." 7 As far as you know, is that statement 8 accurate? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I'm not qualified to 11 answer. I don't know. 12 BY MR. SISNEROS: 13 Q. Were you aware that AWP was used to 14 reimburse third-party payers? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: I cannot define in what 17 circumstances it would have been used or not 18 used. 19 BY MR. SISNEROS: 20 Q. Well, at the time that you were given 21 the task of putting together this Working Group 22 meeting, you were involved in discussions of reim</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Which not -- which is not the 2 manufacturer's price. 3 Q. What is the manufacturer's price? 4 A. The manufacturer's price is -- is it 5 list price, is it -- what is it? 6 Q. Basically, if I understand you 7 correctly -- and you correct me if I'm wrong, but 8 the way I understand this, you're saying that 9 acquisition cost would be the manufacturer's 10 price plus a markup for research and development 11 and other associated costs? 12 MS. TABACCHI: Object to the form. 13 BY MR. SISNEROS: 14 Q. Or am I wrong? Did I understand you 15 incorrectly? 16 A. Well, I think "manufacturer's price" 17 needs to be defined. 18 Q. Okay, so you're saying you don't know 19 what "manufacturer's price" is? 20 A. No. As used in this sentence, I do not 21 know. 22 Q. Okay, let's look at the second sentence</p>	<p style="text-align: right;">Page 137</p> <p>1 -- as you call it, coverage to third-party 2 payers, correct? 3 A. Correct. 4 Q. Did you have a basic understanding how 5 they were reimbursed or how they were covered? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: You have to define "basic 8 understanding." 9 BY MR. SISNEROS: 10 Q. Well, what understanding did you have 11 on how third-party payers were covered? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Let's take Medicare. 14 BY MR. SISNEROS: 15 Q. Okay. 16 A. I knew that drugs not administered in 17 the physician's office were not covered under 18 Medicare at that time. 19 Q. All right, how about drugs that were 20 administered in the physician's office? 21 A. I knew they were reimbursed. 22 Q. How?</p>

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<p style="text-align: right;">Page 138</p> <p>1 A. Either under the federal program, 2 Medicare, or sometimes under the state programs, 3 Medicaid. 4 Q. Did you know by what method they were 5 reimbursed? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: I did not know how the 8 prices were set. I was never involved in that. 9 BY MR. SISNEROS: 10 Q. No, no, no. I'm -- I don't understand 11 what you mean "how the prices were set." What do 12 you mean "how the prices were set"? 13 A. I don't know how a division obtained a 14 price for its products from Medicare. 15 Q. I'm not asking that. 16 A. Okay, fine. 17 Q. I don't want to know how a division 18 determined its price. All I want to know is were 19 you -- well, were you aware that AWP was a 20 numerical value? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: I know AWP is a numerical</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay, were you aware that the Medicare, 2 Medicaid and commercial insurance carriers used 3 AWP to set their reimbursement levels? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: "Medicare allowable 6 equals AWP," I wrote it down. Somebody told me 7 that. 8 BY MR. SISNEROS: 9 Q. So you were aware of that? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: Yes. 12 BY MR. SISNEROS: 13 Q. All right, let's go to the second 14 bullet under "Average Wholesale Price." Let me 15 read it into the record. 16 "Medicare pays 80% of the AWP, which 17 basically covers the provider's cost, and the 18 provider generally bills the other 20% of the AWP 19 directly to the patient or Medigap carrier. The 20 latter is essentially the provider's profit." 21 Did I read that correctly? 22 A. That's what it states.</p>
<p style="text-align: right;">Page 139</p> <p>1 value, yes. 2 BY MR. SISNEROS: 3 Q. Did you know that this value was 4 published in Red Book, Blue Book and Medi-Span? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I have never seen any one 7 of those three documents. 8 BY MR. SISNEROS: 9 Q. Okay, and I can appreciate you've never 10 seen it, but were you aware that those values 11 that are called "AWP" were published in these 12 compendia? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I have heard of Red Book. 15 I have never heard of Blue Book or Medi-Span. 16 BY MR. SISNEROS: 17 Q. Okay, we know you've heard of Red Book. 18 Were you aware that AWP values were being 19 published in Red Book? 20 A. Yes. 21 MS. TABACCHI: Object to the form. 22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Okay. And is it accurate to say that 2 what that paragraph is saying, that the 3 provider's cost of product is 80% of the AWP 4 value? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: That is not accurate. 7 BY MR. SISNEROS: 8 Q. It is not accurate? 9 A. No. 10 Q. Well, look at that first part of the 11 sentence. "Medicare pays 80% of the AWP, which 12 basically covers the provider's costs," what does 13 that mean? 14 A. That could have been taken out of a 15 Pink Sheet. I don't know where that came from. 16 Q. So you believe that part is inaccurate? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Oh, do I object to the -- 19 the first part, "Medicare pays 80% of the AWP"? 20 MR. SISNEROS: No, no. 21 THE WITNESS: No, I do not object to 22 that.</p>

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<p style="text-align: right;">Page 142</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. No, no, no, that's -- I'm not talking</p> <p>3 about that. What I'm asking is -- let me read --</p> <p>4 let me read the first part of that sentence.</p> <p>5 "Medicare pays 80% of the AWP, which</p> <p>6 basically covers the provider's cost?" Do you</p> <p>7 see that?</p> <p>8 A. Yes, as stated.</p> <p>9 Q. Okay. I read that as saying that that</p> <p>10 80% of AWP is what the -- is the provider's cost</p> <p>11 for the product. Is that inaccurate?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not know.</p> <p>14 MR. SISNEROS: Okay.</p> <p>15 MR. SOFFER: Counsel, why don't we take</p> <p>16 this time to break for lunch? It's already noon.</p> <p>17 MR. SISNEROS: Well, can I do the last</p> <p>18 bullet point under that heading? I think I --</p> <p>19 I'll be done with at least that little section.</p> <p>20 Is that all right?</p> <p>21 MR. SOFFER: Yes.</p> <p>22 MR. SISNEROS: Okay.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. I'm not sure the pharmaceutical</p> <p>2 industry would agree with the IG report.</p> <p>3 Q. Well, are you talking about Abbott?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: I'm talking generalities.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Okay. All right, fine. You -- so, in</p> <p>8 other words, what you're saying is -- is that you</p> <p>9 don't agree with the IG's report, and the I --</p> <p>10 what the IG is talking about is not a problem,</p> <p>11 just a perceived problem? Is that what you're</p> <p>12 saying?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'm not qualified to</p> <p>15 answer that.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Well, then what do you mean by the word</p> <p>18 "perception"?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: There was not agreement</p> <p>21 between the suppliers and the IG that the prices</p> <p>22 were overstated.</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. All right, let's look at the last</p> <p>3 paragraph of that bullet point of "Average</p> <p>4 Wholesale Price," and I'll read it for the</p> <p>5 record.</p> <p>6 "A problem with current AWP system is</p> <p>7 the perception per the Inspector General's report</p> <p>8 that prices are too high. Specifically, it is</p> <p>9 believed that the brand named drugs are 18%</p> <p>10 overpriced and generic drugs are 40% overpriced."</p> <p>11 Did I read that correctly?</p> <p>12 A. As stated.</p> <p>13 Q. Now, from Mr. Rieger's earlier memo,</p> <p>14 the first page of this exhibit, he identifies you</p> <p>15 and he as the writers of these -- of these</p> <p>16 minutes; is that correct?</p> <p>17 A. (Witness nodding.)</p> <p>18 Q. Is that a yes?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. If you know, what do you mean by</p> <p>21 the word "perception" when you're referencing the</p> <p>22 IG's report?</p>	<p style="text-align: right;">Page 145</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. And who -- is Abbott a supplier?</p> <p>3 A. Yes.</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 BY MR. SISNEROS:</p> <p>6 Q. Okay, so what you're saying is Abbott</p> <p>7 had a disagreement with the conclusions drawn by</p> <p>8 the IG?</p> <p>9 MS. TABACCHI: Object to the form,</p> <p>10 asked and answered.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Yes?</p> <p>13 MR. SOFFER: If you're able to answer,</p> <p>14 you can answer it.</p> <p>15 MR. HOFFMAN: You can answer it.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. How were you aware of that</p> <p>19 disagreement?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: How am I aware of this</p> <p>22 disagreement?</p>

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<p style="text-align: right;">Page 146</p> <p>1 BY MR. SISNEROS: 2 Q. Well, strike it. 3 How did you know there was a 4 disagreement -- 5 A. How do I know? 6 MS. TABACCHI: Object to the form. 7 BY MR. SISNEROS: 8 Q. (Continuing) -- between Abbott and what 9 you believe is the IG's perception of a problem 10 here? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Abbott would believe that 13 the IG did not have an accurate representation of 14 the total cost. 15 BY MR. SISNEROS: 16 Q. Where did you get that information? 17 A. Abbott. 18 Q. Who at Abbott told you that? 19 A. I do not recall. 20 Q. Do you recall if that information came 21 from within the Medicare Working Group or from 22 someone further up the chain from you?</p>	<p style="text-align: right;">Page 148</p> <p>1 AFTERNOON SESSION 2 3 THE VIDEOGRAPHER: We are back on the 4 record at 1:00 p.m. with the start of Tape No. 3. 5 MR. SISNEROS: Good afternoon, Mr. 6 Miller. 7 THE WITNESS: Good afternoon. 8 9 CONTINUING DIRECT EXAMINATION 10 BY MR. SISNEROS: 11 Q. Back to Exhibit Miller 1164. Are you 12 there? 13 A. Exhibit Miller 1164, yes, sir. 14 Q. Okay. And let's go to the second page 15 of Exhibit Miller 1164, ABT 52706. Are you 16 there? 17 A. Yes, sir. 18 Q. All right, when we broke for lunch, I 19 had asked you questions regarding the three 20 bullets under the item that -- in bold there 21 called "Average Wholesale Price." Do you 22 remember?</p>
<p style="text-align: right;">Page 147</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I do not recall. 3 MR. SISNEROS: All right. 4 Okay, let's break for lunch. 5 THE VIDEOGRAPHER: We are off the 6 record at 12:07 p.m. with the end of Tape No. 2. 7 (Recess taken.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes, sir. 2 Q. And regarding the last bullet under 3 "Average Wholesale Price" where it's mentioned 4 that -- that there is a -- that -- well, let me 5 read it to you. 6 This is what it says: "A problem with 7 the current AWP system is the perception per the 8 Inspector General's report that prices are too 9 high. Specifically, it is believed that brand 10 name drugs are 18% overpriced and generic drugs 11 are 40% overpriced." 12 Did I read that correctly? 13 A. Yes, that's as stated. 14 Q. Okay. And you testified earlier that 15 Abbott disagreed with the IG reports; is that 16 correct? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: I cannot speak for 19 Abbott. 20 BY MR. SISNEROS: 21 Q. Well, that's what you said. 22 A. It's my perception that Abbott didn't</p>

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<p style="text-align: right;">Page 150</p> <p>1 agree.</p> <p>2 Q. Okay. Well, how about you? Did you</p> <p>3 disagree with the IG's report?</p> <p>4 A. I had no access to the detail of their</p> <p>5 report.</p> <p>6 Q. But this was a matter of -- I believe</p> <p>7 that you testified earlier that you thought that</p> <p>8 the IG didn't get full and accurate information.</p> <p>9 I believe that was your testimony. Am I -- is</p> <p>10 that right?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I believe the IG would</p> <p>13 have difficulty getting that.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Why is that?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Getting a complete total</p> <p>18 cost picture on anything is difficult.</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Why?</p> <p>21 A. Accounting systems are not built that</p> <p>22 way.</p>	<p style="text-align: right;">Page 152</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. Why not?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 MR. SOFFER: You can answer only if you</p> <p>5 can.</p> <p>6 THE WITNESS: Accounting systems deal -</p> <p>7 - I mean that's not a question that is normally</p> <p>8 asked of an accounting system.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Well, where would the OIG get the full</p> <p>11 and accurate information they required for their</p> <p>12 report?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I have no access to what</p> <p>15 they did.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Well, why -- why do you have a sense</p> <p>18 that their report then did not have the full and</p> <p>19 accurate information?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Well, let me ask it this way. What is</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. You know, I'm sorry, I don't follow.</p> <p>2 The OIG's -- Office of Investigative General,</p> <p>3 when you said earlier you thought they did not</p> <p>4 have full and accurate information, what</p> <p>5 information were you referring to that they did</p> <p>6 not have?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Either acquisition cost</p> <p>9 or actual cost.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. And when you say "actual cost," you're</p> <p>12 referencing Abbott's actual cost for product?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'm talking in general</p> <p>15 about the industry.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Why would they have difficulty getting</p> <p>18 actual cost?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I already answered the</p> <p>21 question. Accounting systems do not readily</p> <p>22 provide that data.</p>	<p style="text-align: right;">Page 153</p> <p>1 your basis for saying that the findings of the</p> <p>2 OIG report do not reflect full and accurate</p> <p>3 information?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: I've been asked that same</p> <p>6 question by my management at times and found it</p> <p>7 very difficult to answer.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Who asked you? What management asked</p> <p>10 you?</p> <p>11 A. Various people I worked for over the</p> <p>12 years.</p> <p>13 Q. Who?</p> <p>14 A. I cannot recall a specific name.</p> <p>15 Q. Your supervisors?</p> <p>16 A. Yes.</p> <p>17 Q. Was that asked -- question asked of you</p> <p>18 when you were -- first entered the corporate</p> <p>19 level?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. SISNEROS:</p>

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<p style="text-align: right;">Page 154</p> <p>1 Q. When you were asked by management, what 2 was your answer? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I gave them the same 5 answer I gave you. 6 BY MR. SISNEROS: 7 Q. Yeah. Which is? 8 A. It's very difficult to do; it's not an 9 answer an accounting system will readily provide. 10 Q. Okay, and what you're saying is the 11 pricing information they did not have was 12 acquisition cost? 13 MS. TABACCHI: Object to the form. 14 BY MR. SISNEROS: 15 Q. Correct? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I do not know what the 18 OIG had. 19 BY MR. SISNEROS: 20 Q. No, I'm asking you -- I think you 21 testified earlier -- you identified two pieces of 22 information that you believe the OIG's report was</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MR. SISNEROS: 2 Q. "The payer" being Medicare, Medicaid or 3 a third-party payer? 4 A. Yes. 5 Q. What amount they would have reimbursed 6 the provider? 7 A. Yes. 8 MS. TABACCHI: Object to the form. 9 BY MR. SISNEROS: 10 Q. All right, and then the -- why would it 11 be difficult for the Office of Investigator 12 General to have obtained that information? 13 MR. SOFFER: Objection. 14 MS. TABACCHI: Object to the form. 15 MR. SOFFER: If you can answer, you 16 may. 17 THE WITNESS: There are product -- 18 there are prices for products, there are fees for 19 services, there are rebates. There are all kinds 20 of cost that go along with these products. I 21 have no idea how they were bundled or not bundled 22 or provided to the payers.</p>
<p style="text-align: right;">Page 155</p> <p>1 not accurate in, in acquisition cost and in 2 industry costs or costs to the manufacturer. Am 3 I right? Is that what you said? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: Yes. 6 BY MR. SISNEROS: 7 Q. And in the -- in the -- when you say 8 "acquisition cost," you're talking about the 9 acquisition cost of the provider, the medical 10 provider? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I have no knowledge of 13 what the providers submitted to Medicare or 14 Medicaid for a product. 15 BY MR. SISNEROS: 16 Q. That's not what I asked. What I asked 17 was whose acquisition costs are you referencing? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: What -- 20 MR. SOFFER: You can answer. 21 THE WITNESS: What the payer would have 22 seen.</p>	<p style="text-align: right;">Page 157</p> <p>1 BY MR. SISNEROS: 2 Q. Is that -- is that information secret 3 information? 4 A. No. 5 MS. TABACCHI: Object to the form. 6 BY MR. SISNEROS: 7 Q. And then I think that the second item 8 that you identified as potentially inaccurate 9 with respect to the OIG's report would be I think 10 you said manufacturer's cost; is that correct? 11 A. I do not recall the exact term. 12 Q. Well, what term would you use? 13 A. Let's stay with manufacturer's cost. 14 Q. And is that value, is that number -- 15 would that be secret? 16 A. It's proprietary within the company. 17 Q. So that's information that the company 18 -- that the industry does not disclose? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Disclose? To whom? 21 BY MR. SISNEROS: 22 Q. Publicly.</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. Yes, we do not disclose publicly.</p> <p>2 Q. Do you disclose it to the government?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Only in an IRS tax suit.</p> <p>5 BY MR. SISNEROS:</p> <p>6 Q. When the IRS would be suing Abbott?</p> <p>7 A. Yeah.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. All right, did -- to your knowledge,</p> <p>11 was the -- these disagreements that folks within</p> <p>12 Abbott had with the OIG's report, was that ever</p> <p>13 communicated to the government?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I'm not qualified to</p> <p>16 answer.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. I'm sorry, I don't know what that</p> <p>19 means. I mean either you know or you don't.</p> <p>20 A. I don't know.</p> <p>21 Q. You don't know?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Did you even consider that perhaps what</p> <p>2 was being perceived as errors in this report</p> <p>3 within the -- within the Medicap -- Medicare</p> <p>4 Working Group be communicated to someone who</p> <p>5 possibly could do something about these errors?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Was there discussion within the</p> <p>10 Medicare Working Group to look at the findings of</p> <p>11 the OIG's report?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not -- no.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Was there any research that was</p> <p>16 conducted by the Medicare Working Group to at</p> <p>17 least evaluate the accuracy of the OIG's report?</p> <p>18 A. No.</p> <p>19 Q. Was there any activity at all to</p> <p>20 prepare some type of challenge or rebuttal to the</p> <p>21 OIG's report?</p> <p>22 A. No, not that I'm aware of.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Did you take any steps to see if your -</p> <p>2 - the objections within this committee or</p> <p>3 Medicare Working Group, did you take any steps to</p> <p>4 see that any objections to that report were</p> <p>5 communicated up the chain and possibly to the</p> <p>6 government?</p> <p>7 A. No.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. Why not?</p> <p>11 A. In my opinion, there was no positive</p> <p>12 outcome on that.</p> <p>13 Q. What does that mean?</p> <p>14 A. The OIG wasn't going to change its</p> <p>15 report either way.</p> <p>16 Q. Well, but if there was some</p> <p>17 disagreement as to a perceived error in their</p> <p>18 report, would it not have been beneficial to at</p> <p>19 least get some dialogue going?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: I don't know.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Was the OIG's report ever discussed by</p> <p>2 you with any of your supervisors up the chain of</p> <p>3 command?</p> <p>4 A. No.</p> <p>5 Q. Could we look at Exhibit Miller 1162,</p> <p>6 the members of the Medicare Working Group?</p> <p>7 A. (Witness so doing).</p> <p>8 Q. In terms of position of authority, who</p> <p>9 is the highest ranking individual on that list?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: Cathy Babington.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. And thereafter?</p> <p>14 A. I'm not -- I don't know.</p> <p>15 Q. Would that be you?</p> <p>16 A. Maybe.</p> <p>17 Q. All right, did Cathy Babington take a</p> <p>18 leadership role in the Medicare Working Group?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Did you?</p>

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<p style="text-align: right;">Page 162</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I was in charge of</p> <p>3 coordinating the meetings.</p> <p>4 BY MR. SISNEROS:.</p> <p>5 Q. Were there any -- anyone else in this -</p> <p>6 - in this list of members of the Medicare Working</p> <p>7 Group leaders in the group's work?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection, vague.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Did anyone else on that list take a</p> <p>12 leadership role in the Medicare Working Group --</p> <p>13 MS. TABACCHI: Same objection.</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. (Continuing) -- other than you?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: It's too broad to answer.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. I -- I don't follow you. Within the</p> <p>20 work -- within the activity of the Medicare</p> <p>21 Working Group, other than your leadership, was</p> <p>22 there anyone else recognized as a leader of this</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. All right, could you turn to the third</p> <p>2 page of the minutes at ABT 52707?</p> <p>3 A. Which document are we on?</p> <p>4 Q. Oh, we're still on the same one,</p> <p>5 Exhibit Miller 1164.</p> <p>6 A. Okay.</p> <p>7 Q. Third page, ABT 52707, third or fourth</p> <p>8 page.</p> <p>9 A. Okay.</p> <p>10 Q. Under "Miscellaneous," in your minutes</p> <p>11 you state in there -- excuse me. Under</p> <p>12 "Miscellaneous," first bullet in your minutes,</p> <p>13 you state the following:</p> <p>14 "Due to Congress's inaction in 1996,</p> <p>15 Laboratory Services will receive a 2.7 increase</p> <p>16 in 1997. An alternate site will receive a 3.0</p> <p>17 increase in 1997."</p> <p>18 Do you see that?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: That's what -- I agree it</p> <p>21 states that.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 163</p> <p>1 group?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Each division is</p> <p>4 responsible for its own marketing/selling</p> <p>5 activities.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. But I thought you testified those were</p> <p>8 not discussed in the Medicare Working Group?</p> <p>9 A. Right.</p> <p>10 Q. Okay, I'm not talking about marketing</p> <p>11 and selling of -- with different divisions. What</p> <p>12 I am addressing my question to are to the</p> <p>13 activities of the Medicare Working Group.</p> <p>14 A. The Medicare Working Group was an</p> <p>15 informational-sharing group.</p> <p>16 Q. Who took the leadership role within the</p> <p>17 context of that activity?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: My office called the</p> <p>20 meetings for the informational-sharing</p> <p>21 activities.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Did I read it accurately?</p> <p>2 A. Yes, sir.</p> <p>3 Q. When you say "alternate site," what do</p> <p>4 you reference? What do you mean?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Is there an alternate site unit within</p> <p>7 the Home -- Hospital Products Division?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: That term was used to</p> <p>10 describe non-hospital activities.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. The "alternate site"?</p> <p>13 A. Right.</p> <p>14 Q. So are you referring to non-hospital</p> <p>15 activities by the term "alternate site"?</p> <p>16 A. I do not know, sir.</p> <p>17 Q. And the 3% increase that you refer --</p> <p>18 that you refer to in there, what is that?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I do not know.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. Okay. Let's go to the next highlighted</p>

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<p style="text-align: right;">Page 166</p> <p>1 area called "Next Steps." 2 Are you there? 3 A. Yes, sir. 4 Q. With that first bullet point, let me 5 read it into the record. "Obtain notice of 6 inherent reasonableness document from Mike 7 Tootell and distribute to the Medicare Working 8 Group." 9 Did I read that accurately? 10 A. That's as stated. 11 Q. What is "notice of inherent 12 reasonableness"? 13 A. I do not know. 14 Q. All right, let's go to the next bullet 15 point under "Next Steps." 16 "Obtain list of drugs." Let me read it 17 into the record. "Obtain list of drugs from John 18 Campbell that comprise the 1.4 billion drug 19 market, 900 million of which is projected to be 20 Lupron and other drugs, and distribute to 21 Medicare Working Group." 22 Did I read that accurately?</p>	<p style="text-align: right;">Page 168</p> <p>1 significant? 2 A. Well, a billion dollars is always 3 significant. 4 Q. So it is significant? 5 A. Yes. 6 Q. And why would you be trying to obtain 7 lists of drugs that compromise -- that comp -- 8 that make up a significant drug market and 9 distribute to the Medicare Working Group? 10 MS. TABACCHI: Object to the form, 11 asked and answered. 12 THE WITNESS: I do not know. 13 BY MR. SISNEROS: 14 Q. All right, let's go back to the first 15 page of Exhibit Miller 1164. 16 A. (Witness so doing.) 17 Q. Are you there -- 18 A. Um-hum. 19 Q. -- at ABT 52705? 20 A. Yes, sir. 21 Q. And earlier, I asked you some questions 22 regarding that first sentence, and I'll read it</p>
<p style="text-align: right;">Page 167</p> <p>1 A. That's as stated. 2 Q. Okay, what -- who is John Campbell? 3 A. I believe he worked at TAP. Yes. 4 Q. And why -- why were you obtaining a 5 list of drugs -- 6 MS. TABACCHI: Object to the form. 7 BY MR. SISNEROS: 8 Q. -- for the Medicare Working Group? 9 A. I do not remember. 10 Q. And the reference to 1.4 billion drug 11 market in that one item, is that -- does that 12 refer to Abbott's drug market? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I do not know. 15 BY MR. SISNEROS: 16 Q. Would you agree that a 1.4 billion drug 17 market is a significant drug market? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: There are many one 20 billion dollar drug products. 21 BY MR. SISNEROS: 22 Q. So the -- your answer is, no, it's not</p>	<p style="text-align: right;">Page 169</p> <p>1 into the record again. 2 "Since Medicare seems to be heating up 3 in our" -- strike that. 4 "Since Medicare seems to be heating up, 5 our Working Group seems interested in continuing 6 to meet and others are becoming interested in 7 what we are doing. Jim and I would like to find 8 a way to communicate outside our Working Group. 9 To that end, we are thinking about documenting 10 each of our Working Group meetings via minutes 11 and using this as a communications tool." 12 Did I read that accurately? 13 A. That's as stated. 14 Q. Okay, did -- did -- this is Mr. 15 Rieger's memo, correct? 16 A. Correct. 17 Q. Did you have a sense that, back in 18 January of '97, "Medicare seemed to be heating 19 up," as Mr. Rieger says? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I don't remember. 22 BY MR. SISNEROS:</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q. Earlier in your testimony, you</p> <p>2 testified that when you first met with the --</p> <p>3 with the Medicare Working Group, that some of the</p> <p>4 folks that were present were asking, "Why am I</p> <p>5 here?"</p> <p>6 Do you recall that testimony?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Then by January of '97, according to</p> <p>9 Mr. Rieger's memo, he writes that, "Our Working</p> <p>10 Group seems interested in continuing to meet."</p> <p>11 Do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you agree with that statement, that</p> <p>14 there -- that the group was interested --</p> <p>15 interested in continuing these meetings?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. SISNEROS:</p> <p>19 Q. All right, in the last part of that</p> <p>20 first sentence, Mr. Rieger writes, "Others are</p> <p>21 becoming interested in what we are doing."</p> <p>22 Would you agree with that?</p>	<p style="text-align: right;">Page 172</p> <p>1 A. I read it as a comma, okay?</p> <p>2 Q. Okay. All right, then I'll put it back</p> <p>3 in the record again.</p> <p>4 THE WITNESS: Back in the record.</p> <p>5 MR. SOFFER: We can agree to this,</p> <p>6 right?</p> <p>7 THE WITNESS: Compound, complex, run-on</p> <p>8 sentence.</p> <p>9 BY MR. SISNEROS:</p> <p>10 Q. But you do agree as part of that</p> <p>11 sentence that what's being communicated is that</p> <p>12 others outside the Working Group are interested</p> <p>13 in what you are doing within the Medicare Working</p> <p>14 Group?</p> <p>15 A. That's what it says.</p> <p>16 Q. Okay. So it follows that the last part</p> <p>17 of that sentence, "Jim and I would like to find a</p> <p>18 way to communicate outside of our Working Group,"</p> <p>19 that he is addressing the interests of others</p> <p>20 outside of your group who have become interested</p> <p>21 in your work?</p> <p>22 MR. SOFFER: Objection.</p>
<p style="text-align: right;">Page 171</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I do not recall what</p> <p>3 "others" mean in that context.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. Well, the way I read his sentence is he</p> <p>6 is -- "others" refers to others outside of your</p> <p>7 Working Group. Do you read that sentence that</p> <p>8 way?</p> <p>9 A. It could be read that way, yes.</p> <p>10 Q. Do you read it that way?</p> <p>11 A. Yes.</p> <p>12 Q. Then what follows is, "Jim and I would</p> <p>13 like to find a way to communicate outside of our</p> <p>14 Working Group." Correct? Did I read that</p> <p>15 correctly?</p> <p>16 A. That's part of the sentence, right.</p> <p>17 Q. It is part of the sentence?</p> <p>18 A. Right.</p> <p>19 Q. Because I can't -- I can't determine</p> <p>20 whether that's a comma or a period between the</p> <p>21 words "doing" and "Jim."</p> <p>22 Do you see that?</p>	<p style="text-align: right;">Page 173</p> <p>1 MS. TABACCHI: Object to the form,</p> <p>2 asked and answered.</p> <p>3 MR. SOFFER: Do you understand the</p> <p>4 question?</p> <p>5 THE WITNESS: (Witness nodding.)</p> <p>6 MR. SOFFER: Do you need to hear it</p> <p>7 again?</p> <p>8 THE WITNESS: No.</p> <p>9 I mean attendance was not limited at</p> <p>10 the meetings. If you wanted to show up, you</p> <p>11 could show -- anybody could show up.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Outside of the Medicare Working Group?</p> <p>14 A. Sure.</p> <p>15 Q. And did that happen?</p> <p>16 A. People substituted for people who</p> <p>17 couldn't make meetings, okay? So I mean if you</p> <p>18 had an issue you wanted to talk about, you could</p> <p>19 come to the meeting.</p> <p>20 Q. So there were others outside of the</p> <p>21 distribution list who attended your meetings?</p> <p>22 A. If they attended the meetings, they</p>

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<p style="text-align: right;">Page 174</p> <p>1 would be on the documents.</p> <p>2 Q. Okay, that's -- I understand what you</p> <p>3 said, but that wasn't my question. My question</p> <p>4 was there were others outside the distribution</p> <p>5 lists who attended the meetings?</p> <p>6 A. If you give me all the documents and</p> <p>7 we'll cross reference them back to the members of</p> <p>8 the Working Group, I can tell you whether other</p> <p>9 people attended.</p> <p>10 Q. Is it your belief that they did?</p> <p>11 A. I -- I do not know.</p> <p>12 Q. Okay, well, then let's get back to that</p> <p>13 first sentence.</p> <p>14 A. Okay.</p> <p>15 Q. Is it a fair -- is it reasonable to</p> <p>16 believe that Mr. Rieger was communicating there</p> <p>17 that they were trying -- that you two were trying</p> <p>18 to find a way to communicate to others, other</p> <p>19 than the ones that are listed in the distribution</p> <p>20 list of the Medicare Working Group?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I don't know how to</p>	<p style="text-align: right;">Page 176</p> <p>1 THE WITNESS: That's paraphrase. I</p> <p>2 would -- if there was an issue that I felt I</p> <p>3 needed my boss's input, I would raise it to him.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. In what manner?</p> <p>6 A. Either --</p> <p>7 MS. TABACCHI: Objection to form.</p> <p>8 THE WITNESS: This was an information-</p> <p>9 sharing group. It was not a decision-making</p> <p>10 group.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Would some of that information have</p> <p>13 been relevant to the decision makers?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: The decision makers were</p> <p>16 in the divisions.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. Would the information of the Medicare</p> <p>19 Working Group been important information for the</p> <p>20 decision makers within the divisions?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: If you add in that</p>
<p style="text-align: right;">Page 175</p> <p>1 answer that question. There was no -- the</p> <p>2 minutes are the official discussion document, and</p> <p>3 if those minutes were distributed to non-members</p> <p>4 of the group, I would not have had a problem with</p> <p>5 that.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Would -- well, let me ask it this way.</p> <p>8 Could you have been considering distributing the</p> <p>9 minutes to others outside the Medicare Working</p> <p>10 Group?</p> <p>11 A. No.</p> <p>12 Q. You would not have considered sharing</p> <p>13 this information with your supervisor?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. If I needed to talk to my supervisor,</p> <p>17 I'd go to his office and talk to him.</p> <p>18 Q. So you would discuss what was going on</p> <p>19 with the Medicare Working Group, but just not in</p> <p>20 written form?</p> <p>21 A. No, it --</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 177</p> <p>1 division, I would say yes.</p> <p>2 BY MR. SISNEROS:</p> <p>3 Q. Okay. Now, isn't it possible when you</p> <p>4 read that first sentence that it indicates it</p> <p>5 possibly -- couldn't you have been considering</p> <p>6 distributing the minutes outside of the Medicare</p> <p>7 Working Group?</p> <p>8 MS. TABACCHI: Objection to form.</p> <p>9 MR. SOFFER: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. And you can remember that specifically?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. All right, and the last part of that</p> <p>17 sentence, "Jim and I would like to find a way to</p> <p>18 communicate outside of our Working Group," it is</p> <p>19 your testimony that it's referencing</p> <p>20 communicating within your -- within your Working</p> <p>21 Group?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 178</p> <p>1 MR. SOFFER: Objection, asked and 2 answered. 3 BY MR. SISNEROS: 4 Q. Is that your testimony? 5 A. It is my -- to the best of my 6 knowledge, the minutes of these meetings were 7 only distributed to the members of the Working 8 Group. 9 Q. Okay, let me ask it this way. With 10 regard to the last part of that first sentence, 11 and I'll read that part, "Jim and I would like to 12 find a way to communicate outside of our Working 13 Group," it's your testimony that you did not want 14 to communicate what was going on with the 15 Medicare Working Group outside of the group; is 16 that right? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: I wanted the 19 communication of that group to go back through 20 the representatives of that group. 21 BY MR. SISNEROS: 22 Q. So you did want the information from</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Well, if you want -- if you want 2 Abbott's products to be reimbursed, you just get 3 them on the formulary for Medicare and state 4 Medicaid programs, don't you? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I'm not qualified to 7 answer that. 8 BY MR. SISNEROS: 9 Q. Well, then how do you know if it's -- 10 that it's not reimbursed, it's not going to sell? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I have a -- personal 13 experience. 14 BY MR. SISNEROS: 15 Q. Well, let me ask this. Who does 16 Medicaid Medicare and third-party payers 17 reimburse when they pay for beneficiaries under 18 their plan? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: I don't know all of -- 21 BY MR. SISNEROS: 22 Q. Do they reimburse Abbott?</p>
<p style="text-align: right;">Page 179</p> <p>1 the Medicaid -- Medicare Working Group to be 2 disseminated to others outside the group through 3 the division representatives on the Medi -- 4 A. No. 5 Q. No? 6 A. That was not the intent. I didn't say 7 -- I mean these were not stamped "do not 8 distribute," "do not make copies," but we never 9 had -- I think what Mr. -- I'm guessing -- see, 10 I'm guessing what Rich meant. I'm not -- I can't 11 do that. 12 Q. All right. All right, with respect to 13 the Medicare Working Group's discussion of how 14 third-party payers like Medicare and Medicaid and 15 third-party payers, what they reimbursed, why 16 would Abbott even care? 17 MS. TABACCHI: Objection, form. 18 MR. SOFFER: Objection. 19 THE WITNESS: If a product is not 20 prescribe -- if a product is not reimbursed, it 21 is generally not prescribed. 22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 181</p> <p>1 A. No. 2 Q. How do you know that? 3 A. We don't sell directly to -- well, I 4 don't know. I'm probably not qualified to answer 5 that. 6 Q. Why do you say that? 7 A. I -- I don't believe that Medicare or 8 Medicaid is a direct customer of Abbott, but I'm 9 not a hundred percent sure of that. 10 Q. I see. So -- so the reimbursement for 11 Medicaid/Medicare goes -- goes to the medical 12 provider that provides a service to the Medicaid 13 or Medicare beneficiary? 14 MS. TABACCHI: Object to the form. 15 MR. SOFFER: Objection. 16 You may answer if you know the answer 17 to the question. 18 BY MR. SISNEROS: 19 Q. Do you have a health plan at Abbott? 20 Did you have a health plan at Abbott? 21 A. Yes. 22 Q. When you went to get a prescription,</p>

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<p style="text-align: right;">Page 182</p> <p>1 did you pay for it?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: It had a deductible and a</p> <p>4 co-pay.</p> <p>5 BY MR. SISNEROS:</p> <p>6 Q. And you paid the co-pay?</p> <p>7 A. And the deductible, yes.</p> <p>8 Q. And who paid the balance?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Abbott.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Abbott. So who would Abbott pay?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Abbott had a what I would</p> <p>15 call -- characterize as a pharmacy benefit</p> <p>16 manager who did that for Abbott.</p> <p>17 BY MR. SISNEROS:</p> <p>18 Q. All right, so whoever filled your</p> <p>19 prescription got the pay -- got the</p> <p>20 reimbursement?</p> <p>21 A. (Witness nodding.)</p> <p>22 Q. Is that accurate?</p>	<p style="text-align: right;">Page 184</p> <p>1 which you wrote, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And in it, you -- you're -- the first</p> <p>4 bullet point, you're talking about changing</p> <p>5 reimbursement price for drugs administered in a</p> <p>6 physician's office from AWP. Do you see that?</p> <p>7 A. Correct.</p> <p>8 Q. You've testified that you --</p> <p>9 reimbursement -- that the money we're talking</p> <p>10 about was -- that reimbursement wasn't going to</p> <p>11 go to Abbott, correct?</p> <p>12 A. Correct.</p> <p>13 Q. All right. In the context of</p> <p>14 reimbursement for drugs administered in a</p> <p>15 physician's office, who would be receiving the</p> <p>16 reimbursement, Mr. Miller?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: My assump -- I mean I --</p> <p>19 I've never personally done this. I don't know.</p> <p>20 I'm not qualified to answer. My assumption is</p> <p>21 the doctor got paid.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 183</p> <p>1 A. That's fine.</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. Okay, within the context of Medicaid</p> <p>5 and Medicare reimbursement on pharmaceutical</p> <p>6 products, reimbursement would go to the pharmacy</p> <p>7 that filled the prescription for the Medicaid or</p> <p>8 Medicare beneficiary, correct?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I do not know.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. You do not know?</p> <p>13 A. No.</p> <p>14 Q. All right, can you look at Exhibit 163?</p> <p>15 A. Exhibit Miller 1163?</p> <p>16 Q. Yes. And we will go to I guess that</p> <p>17 would be the second page, ABT 52841.</p> <p>18 A. Okay.</p> <p>19 Q. You see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right, and this is -- this is</p> <p>22 minutes of March -- of March 6th, 1997 minutes,</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Okay. Would your assumption be also</p> <p>2 that a pharmacist would get paid for drugs that</p> <p>3 he is dispensing to a Medicaid or Medicare</p> <p>4 beneficiary by the Medicaid or Medicare program?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 MR. SOFFER: Objection.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. How does -- how does a doctor or a</p> <p>10 pharmacist get paid for Abbott products that they</p> <p>11 -- that are prescribed out to Medicaid or</p> <p>12 Medicare beneficiaries?</p> <p>13 MS. TABACCHI: Object to the form. I'm</p> <p>14 going to object to this entire line of</p> <p>15 questioning as calling for speculation from the</p> <p>16 witness that has no experience in this area.</p> <p>17 We've spent hours on this.</p> <p>18 I'm hopeful that the parties plan to</p> <p>19 finish the deposition today, but let me note now</p> <p>20 my objection to continuing to ask these type of</p> <p>21 questions of a witness that clearly are beyond</p> <p>22 his experience.</p>

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<p style="text-align: right;">Page 186</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. Can you answer the question?</p> <p>3 A. No. I don't know.</p> <p>4 Q. Okay. But one thing you are certain of</p> <p>5 is that reimbursement was not -- wasn't anything</p> <p>6 that was going to go into Abbott's pocket, right?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 MR. SOFFER: Objection.</p> <p>9 THE WITNESS: As I stated earlier, I do</p> <p>10 not believe Medicare or Medicaid is a direct</p> <p>11 customer of Abbott.</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. Okay, so in your thinking,</p> <p>14 reimbursement is tied to the direct customer of</p> <p>15 Medicare and Medicaid?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 Can the reporter please read -- repeat</p> <p>18 that question?</p> <p>19 THE REPORTER: Sure.</p> <p>20 (Record read.)</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. It could have been anytime during that</p> <p>2 tenure.</p> <p>3 Q. Okay, that's fine. And in the second</p> <p>4 line you've got in there, "Medicare pays</p> <p>5 physician 80% of Medicare allowable." Is that</p> <p>6 correct?</p> <p>7 A. That's what I wrote.</p> <p>8 Q. And you've -- and you've identified in</p> <p>9 the earlier line that "Medicare equals AWP,"</p> <p>10 correct?</p> <p>11 A. That's what I wrote.</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. And so at one point or another, you</p> <p>15 would have had information that the Medicare</p> <p>16 program provides a medical provider</p> <p>17 reimbursement?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I will repeat myself. I</p> <p>20 do not know the context in which I got this</p> <p>21 information or passed it on to Rich.</p> <p>22 BY MR. SISNEROS:</p>
<p style="text-align: right;">Page 187</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. All right, would you look at Exhibit</p> <p>3 Miller 1165, a one-page handwritten note?</p> <p>4 A. Um-hum.</p> <p>5 Q. At some -- if I recall correctly, this</p> <p>6 is something that you -- that you -- that you</p> <p>7 sent to Mr. Rieger; is that true?</p> <p>8 A. That is -- that is accurate.</p> <p>9 Q. And there is a piece of information</p> <p>10 that you really don't recall where you got it,</p> <p>11 but at one point or another, it was in your hand?</p> <p>12 A. Correct.</p> <p>13 Q. And because it -- because Mr. Rieger's</p> <p>14 name is there, it would have been at a time point</p> <p>15 you were in your first corporate level position,</p> <p>16 correct?</p> <p>17 A. I can't put a time frame on it.</p> <p>18 Q. Well, did Mr. Rieger work for you in</p> <p>19 any capacity outside of your corporate level</p> <p>20 positions?</p> <p>21 A. No.</p> <p>22 Q. So --</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. But that piece of information</p> <p>2 identifies for you that Medicare pays the</p> <p>3 physician 80% of the Medicare allowable?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 BY MR. SISNEROS:</p> <p>6 Q. Isn't that what you wrote?</p> <p>7 A. But I don't know in what context it was</p> <p>8 written.</p> <p>9 Q. I understand that, but it indicates to</p> <p>10 you that Medicare pays a physician?</p> <p>11 A. In some instance.</p> <p>12 Q. Okay. All right, now, let's -- I want</p> <p>13 to go back to an area earlier, and I -- I may</p> <p>14 have misunderstood your answer, so I need you to</p> <p>15 clarify it for me.</p> <p>16 And that is I asked you some questions</p> <p>17 why pricing was not discussed in the Medicare</p> <p>18 Working Group. Do you recall?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And at one point, you said there was</p> <p>21 some issue of legality. You recall that?</p> <p>22 A. That -- yes.</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. And the question that I had followed up 2 with and your response, which I may have 3 misunderstood, concerns whether any legal advice 4 was received by the Medicare Working Group. 5 So my question to you is did the 6 Medicare Working Group receive legal advice from 7 either Abbott's counsel or outside counsel? Yes 8 or no question. 9 MS. TABACCHI: Object to the form. 10 I'm going to caution -- I'm also going 11 to caution the witness not to reveal the 12 substance of any communications with counsel. 13 BY MR. SISNEROS: 14 Q. And I'm not asking for the substance. I 15 just want to know yes or no. 16 A. No. 17 Q. On what basis then do you say that 18 there might have been an issue of legality? 19 MS. TABACCHI: Object to the form. 20 Again, I will caution the witness not to reveal 21 the substance of any communications with counsel. 22 MR. SISNEROS: And I'm only going here</p>	<p style="text-align: right;">Page 192</p> <p>1 THE WITNESS: I don't know. We were 2 just trained never to do it. 3 BY MR. SISNEROS: 4 Q. And, again, who are the multiple 5 divisions? 6 A. The multiple divisions are the 7 Pharmaceutical Division, the Ross Division, 8 Hospital Products Division, the Abbott 9 Diagnostics Division. 10 Q. The folks that were representative -- 11 represented on the Medicare Working Group? 12 A. Yes. 13 Q. Okay. 14 MS. TABACCHI: Let me know when it's a 15 good time to take a few minutes. 16 MR. SISNEROS: How much time? 17 THE VIDEOGRAPHER: We've got about a 18 half hour left on this tape. 19 MR. SISNEROS: Can it wait? We can 20 take a break right now. 21 MR. SOFFER: I won't be able to wait a 22 half hour.</p>
<p style="text-align: right;">Page 191</p> <p>1 because -- 2 MS. TABACCHI: I'm just reminding the 3 witness. 4 MR. SISNEROS: Okay, good. Yeah, good, 5 good. 6 MS. TABACCHI: Because I think you're 7 mixing apples and oranges, really. 8 MR. SISNEROS: All right, well -- 9 THE WITNESS: My training was never to 10 discuss pricing in a room with multiple 11 divisions. 12 BY MR. SISNEROS: 13 Q. Where did -- where did -- where did you 14 receive this training? 15 A. My -- 16 Q. At the corporate level? 17 A. No. Throughout my career. We just 18 never talked prices. 19 Q. And, again, why is that? 20 A. (Gesturing.) 21 MS. TABACCHI: Object to the form and - 22 -</p>	<p style="text-align: right;">Page 193</p> <p>1 MS. TABACCHI: Sorry, my Starbucks cup 2 is empty. 3 THE VIDEOGRAPHER: We are off the 4 record at 1:47 p.m. 5 (Recess taken.) 6 (Exhibit Miller 1166 was marked 7 for ID) 8 THE VIDEOGRAPHER: We are back on the 9 record at 1:59 p.m. 10 BY MR. SISNEROS: 11 Q. All right, Mr. Miller, I'm handing you 12 what I've marked and identified as Exhibit 166 to 13 your deposition. 14 MS. TABACCHI: Is that Exhibit Miller 15 1166? 16 MR. SISNEROS: Yes. 17 BY MR. SISNEROS: 18 Q. Take a moment and review it, please, 19 and as just a housecleaning matter, you should 20 have three pages, Bates No. ABT 52901 through ABT 21 52903. Do you have them? 22 A. Yes, sir.</p>

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<p>1 Q. Okay.</p> <p>2 A. (Witness reviewing document.)</p> <p>3 Yes, sir.</p> <p>4 Q. You ready sir?</p> <p>5 A. Yep.</p> <p>6 Q. All right, the first page is a memo</p> <p>7 from Mr. Rieger dated April 23rd, 1997 to the</p> <p>8 Medicare Working Group attaching the Medicare</p> <p>9 Working Group meeting minutes' most recent</p> <p>10 meeting; is that correct?</p> <p>11 A. As stated.</p> <p>12 Q. As stated, okay. And the following</p> <p>13 page is -- or the following two pages, rather,</p> <p>14 are the actual minutes from the Medicare Working</p> <p>15 Group meeting of April 17th, 1997; is that right?</p> <p>16 A. As stated.</p> <p>17 Q. Okay, and do you recall whether you</p> <p>18 made this meeting or not?</p> <p>19 A. I do not recall.</p> <p>20 Q. Okay. And if you could turn to the --</p> <p>21 to the last page under the section entitled</p> <p>22 "Diabetes," do you see that?</p>	<p>1 A. As stated.</p> <p>2 Q. And Miss Sensibaugh works in Abbott's</p> <p>3 Washington, D.C. office?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So at least in your review of these</p> <p>6 minutes, it would be accurate to say that the</p> <p>7 Medicare Working Group did at times discuss</p> <p>8 pending legislation regarding Medicare coverage?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: As I've testified</p> <p>11 earlier, the Washington office kept the members</p> <p>12 abreast of pending legislation.</p> <p>13 BY MR. SISNEROS:</p> <p>14 Q. So the answer is yes to my question?</p> <p>15 A. Yes.</p> <p>16 MR. SISNEROS: Okay.</p> <p>17 (Exhibit Miller 1167 was marked</p> <p>18 for ID)</p> <p>19 BY MR. SISNEROS:</p> <p>20 Q. Mr. Miller, I am handing you what I --</p> <p>21 what has been marked and identified as Exhibit</p> <p>22 Miller 1167 to this deposition.</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. All right. And it has three bullet</p> <p>3 points discussing bill spending before the House</p> <p>4 of Representative regarding coverage of different</p> <p>5 procedures or services by the Medicare program.</p> <p>6 Is that accurate? Actually, strike that.</p> <p>7 Let me say there would -- under the</p> <p>8 "Diabetes" heading, the third bullet, they're</p> <p>9 talking about "a pending House bill regarding the</p> <p>10 Medicare coverage of diabetes outpatients self-</p> <p>11 management training services."</p> <p>12 Do you see that, sir?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And then in the first bullet, there's</p> <p>15 some discussion about another House bill, but no</p> <p>16 reference is made to Medicare there; is that</p> <p>17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And then the second bullet discusses</p> <p>20 Cindy Sensibaugh and Rich Rieger distributing</p> <p>21 general office accounting material to the</p> <p>22 Medicare Working Group; is that right?</p>	<p>1 Could you take a moment and review</p> <p>2 those pages, please?</p> <p>3 A. (Witness reviewing document).</p> <p>4 MS. TABACCHI: Thank you.</p> <p>5 THE WITNESS: Yes, sir?</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. All right, a little housekeeping first.</p> <p>8 I need you to confirm that the following Bates</p> <p>9 Numbers making up Exhibit Miller 1167, starting</p> <p>10 with ABT 533815, ABT 53172, ABT 53713?</p> <p>11 A. No, wait, wait. We have different</p> <p>12 documents. I have 53315, 53316, 53317, 53318.</p> <p>13 MS. TABACCHI: And this is why we do</p> <p>14 this.</p> <p>15 MR. SISNEROS: That's why we do it. Let</p> <p>16 me see what you have.</p> <p>17 THE WITNESS: (Tendering document).</p> <p>18 MR. SISNEROS: Actually, I believe it's</p> <p>19 the same -- we have the same document that was</p> <p>20 received twice from Abbott, and so it's going to</p> <p>21 have two different Bates Numbers, but let's clean</p> <p>22 it up.</p>

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<p style="text-align: right;">Page 198</p> <p>1 Can we go off the record a second?</p> <p>2 THE VIDEOGRAPHER: We are off the</p> <p>3 record at 2:08 p.m.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: We are back on the</p> <p>6 record at 2:10 p.m.</p> <p>7 BY MR. SISNEROS:</p> <p>8 Q. Mr. Miller, I have handed you what's</p> <p>9 been marked and identified as Exhibit Miller</p> <p>10 1167. Have you read it?</p> <p>11 A. Yes, sir.</p> <p>12 Q. All right, and the Bates stamps on the</p> <p>13 exhibit you have are ABT 53315, 53172 --</p> <p>14 MR. SOFFER: No.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. 53316, excuse me. Right? 53316 is the</p> <p>18 second page of this?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And the third page is 53317?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And 53318, correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yes.</p> <p>2 Q. Okay, and so one of the discussions or</p> <p>3 at least mention that would have been made in the</p> <p>4 Medicare Working Group was the American Medical</p> <p>5 Association's proposed Medicare reforms; is that</p> <p>6 right?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 I'm sorry, could you -- would you mind</p> <p>9 reading the question back to him?</p> <p>10 (Record read.)</p> <p>11 MS. TABACCHI: I object to the form.</p> <p>12 THE WITNESS: The memo was distributed,</p> <p>13 and there would have been -- well, I don't know.</p> <p>14 I mean I'm -- I'm assuming there was discussion.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Okay. But we do know from Exhibit</p> <p>17 Miller 1167 that the information that you passed</p> <p>18 on to the Medicare Working Group concerned the</p> <p>19 activity of the American Medical Association's</p> <p>20 ideas on Medicare?</p> <p>21 A. Yes.</p> <p>22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 199</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And just so we'll identify them</p> <p>3 for the record, what it is is a memo from you to</p> <p>4 what appears the Medicare Working Group dated</p> <p>5 November 21st, 1996 relating to the "Monday's</p> <p>6 meeting, 11/25/96 on Medicare reform - Don</p> <p>7 Buell's comments." Is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And the meeting that you're referencing</p> <p>10 in your memo of November 21st, 1996 references a</p> <p>11 Medicare Working Group meeting?</p> <p>12 A. Yes.</p> <p>13 Q. And attached to your memo is a memo</p> <p>14 from Don Buell, Director of Health, Economics and</p> <p>15 Policy, addressed to you dated November 21st,</p> <p>16 1996, giving a summary of the AMA/Industry Round</p> <p>17 Table Steering Committee; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And essentially what your memo does is</p> <p>20 it distributes Mr. Buell's memo to you, and you</p> <p>21 redistribute it to the Medicare Working Group?</p> <p>22 That's what you did, right?</p>	<p style="text-align: right;">Page 201</p> <p>1 BY MR. SISNEROS:</p> <p>2 Q. And this is something you yourself</p> <p>3 brought up to the attention of the Medicare</p> <p>4 Working Group, correct?</p> <p>5 A. I distributed the document.</p> <p>6 Q. You brought it to their attention by</p> <p>7 distributing it, right?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection.</p> <p>10 THE WITNESS: I re --</p> <p>11 MS. TABACCHI: Is there a question</p> <p>12 pending? I'm sorry, what's the question that's</p> <p>13 pending?</p> <p>14 BY MR. SISNEROS:</p> <p>15 Q. Well, do you recall your testimony that</p> <p>16 the purpose of the Medicare Working Group was</p> <p>17 information sharing?</p> <p>18 A. (Witness nodding.)</p> <p>19 Q. Would you agree --</p> <p>20 MS. TABACCHI: Can I --</p> <p>21 MR. SOFFER: You have to answer --</p> <p>22 MS. TABACCHI: Mr. Miller, you need to</p>

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<p>1 answer audibly.</p> <p>2 MR. SOFFER: -- audibly.</p> <p>3 THE WITNESS: Oh, yes. Sorry.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. Do you agree that your memo with the</p> <p>6 ABA attachment is a step you took to share</p> <p>7 information with the Medicare Working Group?</p> <p>8 A. Yes.</p> <p>9 MR. SISNEROS: All right.</p> <p>10 (Exhibit Miller 1168 was marked</p> <p>11 for ID)</p> <p>12 BY MR. SISNEROS:</p> <p>13 Q. All right, I'm handing to you what has</p> <p>14 been marked and identified as Exhibit Miller 1168</p> <p>15 to your deposition, and if you could take a few</p> <p>16 moments and review it, please?</p> <p>17 A. (Witness reviewing document.)</p> <p>18 Q. Have you had a chance to review the</p> <p>19 documents, Mr. Miller?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right, let's do some housecleaning</p> <p>22 and see if I screwed it up again. All right, on</p>	<p>1 A. (Witness so doing).</p> <p>2 Q. Can you identify this document?</p> <p>3 MS. TABACCHI: Object to the form to</p> <p>4 the extent that you are assuming that Exhibit</p> <p>5 Miller 1168 comprises a single document.</p> <p>6 MR. SISNEROS: No, I'm -- actually, I'm</p> <p>7 going to ask about every page.</p> <p>8 MS. TABACCHI: The question as stated -</p> <p>9 -</p> <p>10 MR. SISNEROS: Oh, I'm sorry.</p> <p>11 BY MR. SISNEROS:</p> <p>12 Q. Okay, regarding the first page of the</p> <p>13 exhibit, "Abbott position on Medicare reform,</p> <p>14 Monday, November 25th, 1996," do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Does that indicate to you that the</p> <p>17 Medicare -- strike that.</p> <p>18 Is this referencing a meeting conducted</p> <p>19 by the Medicare Working Group on Abbott's</p> <p>20 position on Medicare reform?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: It's a list of</p>
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<p>1 Exhibit Miller 1168, Page 1, ABT 531161 --</p> <p>2 A. 53161.</p> <p>3 Q. 53161.</p> <p>4 A. Correct.</p> <p>5 Q. Second page ABT 53162; is that correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Next page is 53163?</p> <p>8 A. Yes, sir.</p> <p>9 Q. 53164?</p> <p>10 A. Yes, sir.</p> <p>11 Q. 53165?</p> <p>12 A. Yes, sir.</p> <p>13 Q. 53166?</p> <p>14 A. Yes, sir.</p> <p>15 Q. 53167?</p> <p>16 A. Yes, sir.</p> <p>17 Q. 53168?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And 53169?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right, if you could turn to the</p> <p>22 first page, ABT 53161?</p>	<p>1 participants in a meeting of the Medicare Working</p> <p>2 Group.</p> <p>3 BY MR. SISNEROS:</p> <p>4 Q. Okay. And when you say "participants,"</p> <p>5 are you saying participants at the meeting of</p> <p>6 November the 25th, 1996?</p> <p>7 A. It's labeled with those that were --</p> <p>8 it's labeled to distinguish between those that</p> <p>9 attended, those that participated via phone</p> <p>10 calls, and those that weren't there.</p> <p>11 Q. And those that weren't there, there is</p> <p>12 an asterisk next to their name, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And those who participated by phone,</p> <p>15 there is a double asterisk next to their name?</p> <p>16 A. Correct.</p> <p>17 Q. And does that mean that those who</p> <p>18 attended, there is nothing next to their name?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 BY MR. SISNEROS:</p> <p>21 Q. Or let me ask it this way. How is it</p> <p>22 indicated who attended that meeting?</p>

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<p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: There is no positive 3 identification. 4 BY MR. SISNEROS: 5 Q. Do you recall attending this meeting? 6 A. Do I recall? No. 7 Q. From -- from this first page, ABT 8 53161, it does though indicate that there was a 9 meeting of the Medicare Working Group regarding 10 Abbott's position on Medicare reform, correct? 11 A. Correct. 12 Q. Okay. If you could turn to the next 13 page, ABT 53162, do you have that in front of 14 you? 15 A. Yes, sir. 16 Q. Do you know Bill Dwyer? 17 A. Yes, sir. 18 Q. Okay, he was part of the Medicare 19 Working Group; is that right? 20 A. Yes, sir. 21 Q. Okay. Page ABT 53162 of Exhibit Miller 22 1168 seems to memorialize a phone conference,</p>	<p>1 53165, at the top of the page says "page 3 of 3." 2 Do you see that? 3 A. Yes, sir. 4 Q. Does that indicate to you that those 5 three pages, ABT 53163, 64 and 65, are a fax that 6 you received? 7 A. It's my hand -- it's my hand -- yes. 8 Q. And what you received from him was a 9 "Proposed Abbott position re Medicare reform" 10 dated 11/25/96, right? 11 A. Correct. 12 Q. But by the way the -- is that your 13 handwriting on the upper right-hand corner of ABT 14 531163, the fax cover sheet? Is that your 15 handwriting up at the -- above? 16 A. Yes. 17 MR. SOFFER: Counsel, just for 18 clarification, I hear you doubling the 1, I 19 think, in 53163. 20 MR. SISNEROS: All right. 21 MR. SOFFER: We are talking about 22 53163, correct?</p>
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<p>1 telephone conference with Mr. Dwyer. Do you 2 agree? 3 A. It purports to be that. 4 Q. Are these your notes? 5 A. I have no idea whose notes these are. 6 Q. Okay. All right, let's go to the third 7 page of Exhibit Miller 1168, ABT 53163. You see 8 that? 9 A. Yes, sir. 10 Q. And that is a -- a faxed cover sheet of 11 a fax being sent by you to Don Buell, Director 12 Health Economics and Policy; is that correct? 13 A. No, sir. Reverse. 14 Q. Oh, to you from Mr. Buell? 15 A. Yes, sir. 16 Q. Okay. And what he has sent you is the 17 "Revised position re Medicare," correct? 18 A. That's what it states. 19 Q. And at the top of the fax that you 20 received, it's "page 1 of 3," and then the 21 following page, ABT 53164, at the very top says 22 "page 2 of 3" and then the following page, ABT</p>	<p>1 MR. SISNEROS: That is correct. 2 MR. SOFFER: All right. 3 MR. SISNEROS: And it's entitled "fax 4 cover sheet." 5 THE WITNESS: I'm sorry? 6 MR. SOFFER: I'm just confirming that 7 we're talking about the same page. 8 THE WITNESS: All right. 9 BY MR. SISNEROS: 10 Q. All right, you see where that says "fax 11 cover sheet"? 12 A. Yes. 13 Q. And to the right of that, there's some 14 handwriting? 15 A. Um-hum. Yes, sir. 16 Q. Is that your handwriting? 17 A. Those are my notes. 18 Q. Okay. Okay, was this fax -- excuse me. 19 Was Mr. Buell's fax to you discussed within the 20 Medicare Working Group? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: I believe -- I believe</p>

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<p style="text-align: right;">Page 210</p> <p>1 this document is covered in Exhibit Miller 1167. 2 BY MR. SISNEROS: 3 Q. I'm sorry, say again? 4 A. I believe this document is covered in 5 your document Exhibit Miller 1167. 6 Q. Okay, if you would turn to Exhibit 7 Miller 1167 and review that, that is Mr. Buell's 8 memo to you of his report on "meeting of the 9 AMA/Industry Round Table." Do you see that? 10 A. So this was after. 11/25? So this was 11 written after the meeting. 12 Q. Okay, well, let me ask the -- 13 A. Go ahead. 14 Q. What do you mean this was written 15 after? What are you referring to? 16 A. I'm referring to -- I'm sorry, I'm 17 looking at the dates on the document. 18 Q. Okay, and the sequence of documents 19 that you commented on, could you please clarify 20 for the record what documents you were referring 21 to in -- 22 A. I'm looking at Abbott document 53316</p>	<p style="text-align: right;">Page 212</p> <p>1 A. Yes. 2 Q. Okay. All right, now let's go to 3 Exhibit -- same exhibit, Exhibit Miller 1168, but 4 to page -- to ABT 53166. 5 A. (Witness so doing.) 6 Q. And those are handwritten notes 7 entitled, "Medicare 11/25/96." Is that right? 8 A. That is correct. 9 Q. Is that your handwriting? 10 A. That is my handwriting. 11 Q. The fourth line from the bottom -- 12 A. One, two, three, four. 13 Q. -- you wrote the following: "Estimated 14 acquisition cost (invoice versus waste, 15 distribution) - reimbursement - oncology." 16 What do you mean by those notes? 17 A. I do not remember. 18 Q. And the top of the page where you have 19 -- where it says, "Medicare 11/25/96," does the 20 11/25/96 reference the day that you wrote these 21 notes? 22 A. Yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 dated November 21st, 1996. 2 Q. Actually, I wasn't even asking 3 questions about that. 4 A. Oh. 5 Q. I was asking questions about on Exhibit 6 16 -- Exhibit Miller 1168. On Exhibit Miller 7 1168 -- you got that? 8 A. Yep. 9 Q. (Continuing) -- I was asking whether 10 Mr. Miller's fax to you -- 11 A. Mr. Buell's fax. 12 Q. Excuse me. (Continuing) -- Mr. Buell's 13 fax to you of three pages where he's sent to you 14 "proposed Abbott position Medicare reform," 15 whether that fax and his two pages of the 16 proposed Abbott position, whether that was 17 discussed in the Medicare Working Group? 18 A. I do not know whether this specific 19 document was discussed. 20 Q. Was the subject matter -- 21 A. Yes. 22 Q. -- discussed?</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. All right, now, going back to Exhibit 2 Miller 1167 -- 3 A. Um-hum. 4 MR. SISNEROS: Let's go off the record 5 for a change of tape. 6 THE VIDEOGRAPHER: We are off the 7 record at 2:32 p.m. with the end of Tape No. 3. 8 (Recess taken.) 9 THE VIDEOGRAPHER: We are back on the 10 record at 2:34 p.m. with the start of Tape No. 4. 11 BY MR. SISNEROS: 12 Q. All right, let me make a little change 13 here. Stay on Exhibit Miller 1168, the page 14 you're on, your handwritten notes, ABT 53166. Do 15 you see that? 16 A. Okay. Yes, sir. 17 Q. All right, you've testified this is 18 your handwriting? 19 A. Yes. 20 Q. What -- what is this? 21 A. It appears to be my notes from a 22 presentation or discussion.</p>

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<p>1 Q. By Don Buell?</p> <p>2 A. I do not know.</p> <p>3 Q. And would you agree that the subject</p> <p>4 matter of -- of your handwritten notes seems to</p> <p>5 be "the American Medical Association" and some</p> <p>6 notes regarding Medicare reform?</p> <p>7 MS. TABACCHI: I'll object to the form.</p> <p>8 BY MR. SISNEROS:</p> <p>9 Q. Well, let me ask it this way. What is</p> <p>10 the subject matter of your handwritten notes?</p> <p>11 A. The AMA proposal.</p> <p>12 Q. Now, who was monitoring the AMA and</p> <p>13 their activity with regard for the Medicare --</p> <p>14 proposed Medicare reform?</p> <p>15 A. It would have been the Pharmaceutical</p> <p>16 Division and the Washington office.</p> <p>17 Q. Well, what about Don Buell?</p> <p>18 A. He is a member of the Pharmaceutical</p> <p>19 Division.</p> <p>20 Q. Okay. How about Dr. Conway?</p> <p>21 A. He is a member of the Pharmaceutical</p> <p>22 Division.</p>	<p>1 Q. And by four days earlier, I'm</p> <p>2 referencing four days earlier than your</p> <p>3 handwritten notes; is that right?</p> <p>4 A. That is correct.</p> <p>5 Q. And he is reporting to you regarding</p> <p>6 the meeting of the AMA/Industry Round Table</p> <p>7 Steering Committee; is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. Did -- do you know if Buell attended</p> <p>10 this meeting?</p> <p>11 A. The AMA meeting?</p> <p>12 Q. Yes.</p> <p>13 A. I do not know with certainty.</p> <p>14 (Exhibit Miller 1169 was marked</p> <p>15 for ID)</p> <p>16 BY MR. SISNEROS:</p> <p>17 Q. Okay. Okay, I'm going to hand to you</p> <p>18 what has been marked and identified as Exhibit</p> <p>19 Miller 1169 to your deposition.</p> <p>20 Could you please take a few minutes and</p> <p>21 review those notes or memos?</p> <p>22 A. (Witness reviewing document.)</p>
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<p>1 Q. Were both of them involved in</p> <p>2 monitoring the AMA activity?</p> <p>3 A. I --</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: I do not know, sir.</p> <p>6 BY MR. SISNEROS:</p> <p>7 Q. Well --</p> <p>8 A. We --</p> <p>9 Q. Go ahead.</p> <p>10 A. Question not asked.</p> <p>11 Q. Yeah, okay. Well, look at Exhibit</p> <p>12 Miller 1167 --</p> <p>13 A. Um-hum.</p> <p>14 Q. -- starting at the page ABT 531 --</p> <p>15 A. Yeah.</p> <p>16 Q. I'm sorry, at ABT 53316.</p> <p>17 A. Yes, sir.</p> <p>18 Q. And that is Buell's memo to you of four</p> <p>19 days earlier --</p> <p>20 A. Yes.</p> <p>21 Q. -- is that correct?</p> <p>22 A. Yes, sir.</p>	<p>1 Yes, sir.</p> <p>2 Q. You done reading?</p> <p>3 A. (Witness nodding.)</p> <p>4 Q. Okay, this is email -- excuse me. This</p> <p>5 is a memoranda from you dated November the 26th,</p> <p>6 1996 addressed to Mary Quinn Boyd and cc to D.</p> <p>7 Buell and R. Rieger, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And the subject matter of your memo is,</p> <p>10 "Proposed Abbott position Medicare reform." Is</p> <p>11 that right?</p> <p>12 A. Correct.</p> <p>13 Q. And the sentence -- the sentence that</p> <p>14 follows the re line is, "Attached is a revised</p> <p>15 draft reflecting the inputs of all the divisions'</p> <p>16 representatives. I see the approval process as</p> <p>17 follows:" And then you lay it out, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay, and so when you're talking about</p> <p>20 the the inputs of all the division</p> <p>21 representatives in that first sentence, you're</p> <p>22 referring to the input of the division</p>

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<p style="text-align: right;">Page 218</p> <p>1 representatives in the Medicaid -- Medicare</p> <p>2 Working Group; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And so the attached two documents that</p> <p>5 are the proposed Abbott position paper re</p> <p>6 Medicare reform is a -- your final product that</p> <p>7 is being run up the chain, is that right, up the</p> <p>8 chain of command?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 BY MR. SISNEROS:</p> <p>11 Q. Okay, let me try to be more clear. Who</p> <p>12 is Mary Quinn Boyd?</p> <p>13 A. She's -- she was in Corporate Public</p> <p>14 Affairs.</p> <p>15 Q. In terms of corporate level, was she</p> <p>16 above your level?</p> <p>17 A. No.</p> <p>18 Q. Was she below your level?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I do not know that with a</p> <p>21 hundred percent certainty.</p> <p>22 BY MR. SISNEROS:</p>	<p style="text-align: right;">Page 220</p> <p>1 A. By the Medicare Working Group.</p> <p>2 Q. And in your memo to Mary Quinn Boyd, is</p> <p>3 -- you are proposing approval of that document?</p> <p>4 A. Yes.</p> <p>5 Q. Then what follows is -- is a schedule.</p> <p>6 For example, "Monday, 12/2/96, Public Affairs</p> <p>7 approves." Did I read that correctly?</p> <p>8 A. Correct.</p> <p>9 Q. And what you're doing is you're getting</p> <p>10 approvals of different divisions or different</p> <p>11 offices on this document, right?</p> <p>12 A. That was what was proposed.</p> <p>13 Q. Okay. We're talking about the proposed</p> <p>14 document here.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay, and then for Tuesday's agenda --</p> <p>17 then you have, "Tuesday, 12/3/96, division</p> <p>18 representatives obtained their division</p> <p>19 presidents' approval."</p> <p>20 Did I read that correctly?</p> <p>21 A. You read that correctly.</p> <p>22 Q. And the reference to "division</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. Was she -- okay, was she at your level?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I do not believe so.</p> <p>4 BY MR. SISNEROS:</p> <p>5 Q. Okay, why were you sending this to Mary</p> <p>6 Quinn Boyd?</p> <p>7 A. She was the person in Public Affairs</p> <p>8 that would take it to her boss for approval.</p> <p>9 Q. I see. Now, am I accurate in saying</p> <p>10 that the attached Abbott position paper was the</p> <p>11 work product of the Medicare Working Group?</p> <p>12 MR. SOFFER: Objection.</p> <p>13 MS. TABACCHI: Object to the form as</p> <p>14 well.</p> <p>15 BY MR. SISNEROS:</p> <p>16 Q. Oh. Well, let me try this differently.</p> <p>17 Was the attached proposed Abbott position work</p> <p>18 generated in the Medicare Working Group?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: It is a draft document.</p> <p>21 BY MR. SISNEROS:</p> <p>22 Q. That was generated by who?</p>	<p style="text-align: right;">Page 221</p> <p>1 representatives" means the division</p> <p>2 representatives that sat on the Medicare Working</p> <p>3 Group, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And their job was to go back and get</p> <p>6 the approval on the draft from the presidents of</p> <p>7 their division?</p> <p>8 A. Correct.</p> <p>9 Q. And then for Wednesday, December the</p> <p>10 4th, 199 --</p> <p>11 A. Can I stop this discussion for a</p> <p>12 second? This document was never approved.</p> <p>13 Q. That's fine.</p> <p>14 A. Okay.</p> <p>15 Q. Then going -- then going on to your</p> <p>16 schedule of Wednesday, December 4th -- excuse me.</p> <p>17 Let me read this different. It says, "Wednesday"</p> <p>18 -- it says, "Wednesday, 12/4/96, distribute to</p> <p>19 GPC, TRH and DLB."</p> <p>20 Did I read that correctly?</p> <p>21 A. That's as stated.</p> <p>22 Q. I'm sorry?</p>

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<p style="text-align: right;">Page 222</p> <p>1 A. As stated.</p> <p>2 Q. Yeah. And DLB is Dwayne Burnham,</p> <p>3 right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Who -- who became what, CEO?</p> <p>6 A. He was CEO.</p> <p>7 Q. He was CEO. And then TRH is -- is --</p> <p>8 who's that, Tom --</p> <p>9 A. Hudson.</p> <p>10 Q. Hudson. He was also CEO or --</p> <p>11 A. President.</p> <p>12 Q. He was President. Was he ever CEO?</p> <p>13 A. No.</p> <p>14 Q. So he was Abbott's President. And</p> <p>15 Burnham was Abbott's Chief Executive Officer,</p> <p>16 correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And GPC is --</p> <p>19 A. Gary Coughlin.</p> <p>20 Q. Okay, and he wasn't your immediate</p> <p>21 supervisor, but he was Moorehead's supervisor; is</p> <p>22 that right?</p>	<p style="text-align: right;">Page 224</p> <p>1 My name is Rebecca Ford. I'm with the</p> <p>2 Department of Justice, and I represent the United</p> <p>3 States in the case U.S. ex. rel. Ven-a-Care,</p> <p>4 Florida Keys vs. Abbott laboratories.</p> <p>5 THE WITNESS: Thank you.</p> <p>6</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MS. FORD:</p> <p>9 Q. And this is one of the cases in which</p> <p>10 your deposition has called today. It's separate</p> <p>11 from the action in which Mr. Sisneros represents</p> <p>12 the State of California, but they're related</p> <p>13 litigation.</p> <p>14 Do you understand that there are</p> <p>15 multiple lawsuits that you are being deposed in</p> <p>16 today?</p> <p>17 A. That's what my lawyers have advised me.</p> <p>18 Q. Okay. And although we've switched</p> <p>19 questioners, you're still under oath, and we're</p> <p>20 still continuing the deposition. And I'll just</p> <p>21 remind you that counsel may object from time-to-</p> <p>22 time, both your counsel and counsel from Abbott</p>
<p style="text-align: right;">Page 223</p> <p>1 A. Yes, sir.</p> <p>2 Q. And what what was his title?</p> <p>3 A. Chief Financial Officer.</p> <p>4 Q. There's some notes down at the bottom</p> <p>5 of the memo, Mr. Miller. Are those handwritten</p> <p>6 notes in your handwriting?</p> <p>7 A. Those are not my notes.</p> <p>8 MR. SISNEROS: Okay. All right, thank</p> <p>9 you for your time, Mr. Miller. I pass the</p> <p>10 witness.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 MS. FORD: Can we go off the record for</p> <p>13 just a second?</p> <p>14 THE VIDEOGRAPHER: We are off the</p> <p>15 record at 2:46 p.m.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 2:54 p.m.</p> <p>19 MS. FORD: Mr. Miller, good afternoon.</p> <p>20 I introduced myself this morning briefly off the</p> <p>21 record, but for purposes of the record, I'll</p> <p>22 introduce myself again.</p>	<p style="text-align: right;">Page 225</p> <p>1 may object from time-to-time, but unless they</p> <p>2 instruct you not to answer, you may answer the</p> <p>3 question.</p> <p>4 I believe you testified earlier that</p> <p>5 you retired from Abbott in 2003; is that correct?</p> <p>6 A. December 31st, 2003.</p> <p>7 Q. Okay. And have you held any</p> <p>8 professional positions since that time?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 BY MS. FORD:</p> <p>11 Q. Do you understand my question?</p> <p>12 A. Rephrase, please.</p> <p>13 Q. Have you worked since December of 2003?</p> <p>14 A. Yes.</p> <p>15 Q. And what was your job most recently</p> <p>16 after retiring from Abbott in December of 2003?</p> <p>17 A. Oh, everything I've done is of a</p> <p>18 consulting nature.</p> <p>19 Q. Okay.</p> <p>20 A. I consulted for Abbott for several</p> <p>21 months after I retired as part of the transition</p> <p>22 of the lady that replaced me.</p>

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<p style="text-align: right;">Page 226</p> <p>1 Q. Okay. And when did that consulting 2 end? 3 A. It was probably March 2004. 4 Q. Okay. And other than consulting with 5 Abbott to help train your replacement, have you 6 done any consulting for Abbott or any Abbott 7 affiliate since that time? 8 A. No. 9 Q. Okay. Have you worked for -- done any 10 consulting work for TAP since that time? 11 A. No. 12 Q. Okay. Do you currently receive any 13 retirement benefits from Abbott? 14 A. Yes. 15 Q. Okay, and do you own Abbott stock? 16 A. I do not. 17 Q. Okay. Other than currently receiving 18 retirement benefits, do you have any other 19 connections to Abbott at this point in time? 20 MS. TABACCHI: Object to the form. 21 MR. SOFFER: Objection. 22 BY MS. FORD:</p>	<p style="text-align: right;">Page 228</p> <p>1 the witness that, to the extent his understanding 2 is based purely on communications with counsel, 3 he should not reveal the substance of 4 communications with counsel. 5 MR. SOFFER: Are you able to answer 6 that question without necessarily disclosing 7 conversations you have had with either me or Mr. 8 Hoffman or Ms. Tabacchi? 9 THE WITNESS: I have my own attorneys. 10 BY MS. FORD: 11 Q. And are you receiving a bill for your 12 legal services? 13 A. No. 14 Q. Do you know who is paying for your 15 legal services? 16 A. Abbott. 17 Q. Okay. Earlier this morning, I believe 18 you testified that you thought of Abbott at some 19 point in time as six companies. Did I -- am I 20 remembering correctly? 21 A. That's my characterization of Abbott. 22 Q. Okay, what did you mean by that?</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Let me see if I can help you out. Do 2 you have any family members that work for Abbott? 3 A. No. 4 Q. Okay. Any close friends that still 5 work at Abbott? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: No. 8 BY MS. FORD: 9 Q. And what is your understanding of how 10 you're being represented today? Are you being 11 represented by Abbott counsel? 12 MS. TABACCHI: Object to the form. 13 I'm going to caution the witness not to 14 reveal the substance of any communications with 15 counsel. 16 MR. SOFFER: Objection. 17 BY MS. FORD: 18 Q. I'm not asking you to discuss anything 19 you have discussed with your counsel. I'm just 20 asking your understanding of who is representing 21 you. 22 MS. TABACCHI: I'm going to instruct</p>	<p style="text-align: right;">Page 229</p> <p>1 A. They operate fairly autonomously and 2 report up through -- in 31 years, the 3 organization changed many times, but they 4 basically operate up through a line structure. 5 Q. Okay, and when you say "they," who are 6 referring to? 7 A. The divisions. 8 Q. Okay, and could you just for my own 9 purposes list out the six divisions that you were 10 discussing or that you're referring to? Excuse 11 me. 12 A. You've got Ross Laboratories, Hospital 13 Products Division, Pharmaceutical Products 14 Division, Diagnostics Division, and the 15 International Division. Is that five or six? 16 Q. That's five. 17 A. Five, okay. 18 Q. Can you think of the last one? 19 A. No. 20 Q. Okay. Could the last one have been 21 TAP? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 230</p> <p>1 THE WITNESS: TAP is a joint venture. 2 BY MS. FORD: 3 Q. Okay, so when you referenced six 4 companies, were you referring -- was TAP on of 5 the six that you were referring to? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: No. 8 BY MS. FORD: 9 Q. So there's one other you just can't 10 remember at this time? 11 A. There's basically Corporate. 12 Q. Corporate, okay. 13 I wanted to ask you just a little bit 14 more about TAP. You have indicated throughout 15 your testimony today that TAP was at least at 16 some of the Medicare Working Group meetings; is 17 that correct? 18 A. That is correct. 19 Q. And a representative of TAP is on the 20 Medicaid Working Group distribution list; is that 21 correct? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 232</p> <p>1 list? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: TAP was jointly owned by 4 Abbott and Takeda of Japan. So anything that 5 would have affected TAP would 50% flow through to 6 Abbott. 7 BY MS. FORD: 8 Q. To your knowledge, was TAP included on 9 other internal committees of Abbott? 10 A. Oh, yes. 11 Q. Okay. Can you give me an example of a 12 few of those? 13 A. Sure. I mean in the Controller's 14 Council, the MIS areas. I mean it's not unusual 15 for TAP to have been on an Abbott committee. 16 Q. What about public relations, did TAP 17 have their own public relations? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I'm not qualified to 20 answer that. 21 BY MS. FORD: 22 Q. Do you know?</p>
<p style="text-align: right;">Page 231</p> <p>1 MS. FORD: What is wrong? 2 MS. TABACCHI: It's Medicare. 3 MS. FORD: Oh, thank you. 4 BY MS. FORD: 5 Q. At least one representative of TAP is 6 listed on the Medicare Working Group distribution 7 list; is that correct? 8 A. That is correct. 9 Q. And that is John Campbell; is that 10 correct? 11 A. Yes. 12 Q. Okay. Did you work with anyone else 13 from TAP in the context of the Medicare Working 14 Group? 15 A. I do not recall. 16 Q. Okay. Do you recall any -- anyone else 17 from TAP attending Medicare Working Group 18 meetings? 19 A. No. 20 Q. Okay. If Abbott is a separate company 21 from TAP, why was TAP included on Abbott's 22 internal Medicare Working Group distribution</p>	<p style="text-align: right;">Page 233</p> <p>1 A. I think so. 2 Q. You think they had their own public 3 relations? 4 A. Yes, but I wouldn't swear to it. 5 Q. Okay. 6 MS. TABACCHI: That's the standard. 7 MR. SOFFER: There you go. That's one 8 of those rare moments where it actually makes 9 sense to say that. 10 BY MS. FORD: 11 Q. I want to go back to a little bit of 12 your testimony this morning when you and Mr. 13 Sisneros talked about the inception of the 14 Medicare Working Group, and I believe you 15 testified that Mr. Moorehead asked you to create 16 the group. Is that correct? 17 A. That is correct. 18 Q. Okay, and do you recall the discussions 19 that you had with Mr. Moorehead around that time? 20 MS. TABACCHI: Object to the form. 21 BY MS. FORD: 22 Q. Let me be more specific. Do you recall</p>

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<p>1 having discussions with Mr. Moorehead in which he</p> <p>2 asked you to -- to head up the Medicare Working</p> <p>3 Group?</p> <p>4 A. Yes.</p> <p>5 Q. Did those discussions occur over the</p> <p>6 telephone?</p> <p>7 A. No.</p> <p>8 Q. Were they in person?</p> <p>9 A. Our offices were next to each other.</p> <p>10 Q. Okay --</p> <p>11 A. Yes.</p> <p>12 Q. -- so, yes, they were in person.</p> <p>13 And do you recall how many times that</p> <p>14 you had discussions with Mr. Moorehead about the</p> <p>15 creation of the Medicare Working Group?</p> <p>16 A. No.</p> <p>17 Q. Do you think it was more than two?</p> <p>18 A. Probably.</p> <p>19 Q. Okay. Generally, what do you call --</p> <p>20 recall from those discussions about the reasons</p> <p>21 for the creation of the Medicare Working Group?</p> <p>22 A. I do not remember the reason for the</p>	<p>1 have bosses, and it was, your boss asks you to do</p> <p>2 it, you do it.</p> <p>3 BY MS. FORD:</p> <p>4 Q. Okay, you indicated that no one at your</p> <p>5 level had been involved with the group before.</p> <p>6 Does that mean the group existed prior to your</p> <p>7 becoming a part of it?</p> <p>8 A. I do not know.</p> <p>9 Q. Okay. And upon getting this new</p> <p>10 assignment, you -- do you think that you would</p> <p>11 have inquired about the purpose or the goals of</p> <p>12 the group?</p> <p>13 A. Oh, we had -- as I've testified</p> <p>14 earlier, we had people show up and say, "Why am I</p> <p>15 here?" So we had some difficulty in even getting</p> <p>16 the right representatives in the room.</p> <p>17 Q. And in response to their question of,</p> <p>18 "Why am I here," what did you say?</p> <p>19 A. "We're setting up an information-</p> <p>20 sharing group so that we can be -- you can keep</p> <p>21 us informed of changes in your area of -- you</p> <p>22 know, of healthcare coverage."</p>
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<p>1 formation.</p> <p>2 Q. Do you recall whether Mr. Moorehead</p> <p>3 gave you a particular objective for the Medicare</p> <p>4 Working Group?</p> <p>5 A. Set up an information sharing group.</p> <p>6 And that's what we did. Why we --</p> <p>7 Q. Is it your testimony that you probably</p> <p>8 knew why at the time, you just can't recall</p> <p>9 today? Is that what you're --</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: I don't remember, you</p> <p>12 know.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay, let me ask you this. Based on</p> <p>15 your history with Abbott, would it have been</p> <p>16 typical for someone to ask you to form a working</p> <p>17 group, but you not -- but for you not to know why</p> <p>18 you were forming the group?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: This was a new assignment</p> <p>21 for me. There had never been a person of my level</p> <p>22 in this group before. So it was -- again, we all</p>	<p>1 Q. Was anyone in the Medicare Working</p> <p>2 Group tasked with doing anything with the</p> <p>3 information they received?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 MR. SOFFER: Objection, vague.</p> <p>6 THE WITNESS: Beyond sharing?</p> <p>7 BY MS. FORD:</p> <p>8 Q. (Counsel nodding.)</p> <p>9 A. No.</p> <p>10 Q. So what was the purpose of sharing the</p> <p>11 information if there was no objective to</p> <p>12 accomplish?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'd be giving you my</p> <p>15 opinion.</p> <p>16 BY MS. FORD:</p> <p>17 Q. Well, as a head of the group, I would</p> <p>18 be interested in what your opinion is.</p> <p>19 A. Okay, my opinion would be it was to --</p> <p>20 if a state was making changes to a TAP product in</p> <p>21 the doctor's office, that same change might</p> <p>22 affect a hospital product sold in the doctor's</p>

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<p style="text-align: right;">Page 238</p> <p>1 office.</p> <p>2 Q. Okay. And so if a state were to make a</p> <p>3 change in Medicaid that would affect a TAP</p> <p>4 product that could also have some spill-over</p> <p>5 effect on an HPD product, would it be your</p> <p>6 expectation that someone from TAP and/or HPD</p> <p>7 would do something with that information?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection, vague.</p> <p>10 THE WITNESS: I'd be speculating.</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay. You indicated earlier that the</p> <p>13 group disbanded sometime in late '97; is that</p> <p>14 correct?</p> <p>15 A. That's my understanding.</p> <p>16 Q. Okay. And I believe you said it was</p> <p>17 because it was no longer a top five priority for</p> <p>18 Abbott.</p> <p>19 Did I summarize your earlier testimony</p> <p>20 accurately?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: In my opinion, the -- Mr.</p>	<p style="text-align: right;">Page 240</p> <p>1 A. (Witness nodding.)</p> <p>2 Q. Your department, okay.</p> <p>3 I think you spoke at length with Mr.</p> <p>4 Sisneros about who the Medicare Working Group</p> <p>5 minutes were distributed to. Aside from that,</p> <p>6 did you have discussions with others in your</p> <p>7 department about the workings or the discussions</p> <p>8 of the Medicare Working Group?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No. I mean it's hard to</p> <p>11 -- you know, to the best of my knowledge, no.</p> <p>12 BY MS. FORD:</p> <p>13 Q. So after the conversations that you had</p> <p>14 with Mr. Moorehead prior to the group forming,</p> <p>15 you didn't have any more discussions with him</p> <p>16 about the Medicare Working Group?</p> <p>17 A. It would be a lunch-time conversation:</p> <p>18 How's it going?</p> <p>19 Q. Okay. Were you ever asked to report on</p> <p>20 the workings of the Medicare Working Group to Mr.</p> <p>21 Moorehead?</p> <p>22 A. I gave Mr. Moorehead a monthly report</p>
<p style="text-align: right;">Page 239</p> <p>1 Moorehead retired, Mr. Weiger came in, and we</p> <p>2 increased the emphasis on product acquisition,</p> <p>3 licensing focus. That was our focus.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Okay. So after Mr. Moorehead retired,</p> <p>6 was his -- did the person who took his place, was</p> <p>7 he no longer asking you about the Medicare</p> <p>8 Working Group?</p> <p>9 A. It --</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: In my opinion, it became</p> <p>12 a lower priority.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Okay, and on what basis are you saying</p> <p>15 it became a lower priority?</p> <p>16 A. Based on the emphasis the group put on</p> <p>17 it.</p> <p>18 Q. The Medicare Working Group?</p> <p>19 A. No.</p> <p>20 Q. Which group?</p> <p>21 A. My department.</p> <p>22 Q. Your department?</p>	<p style="text-align: right;">Page 241</p> <p>1 of my activities.</p> <p>2 Q. Okay, and did that include all of the</p> <p>3 activities that you were responsible for as</p> <p>4 Divisional Vice President --</p> <p>5 A. Yes.</p> <p>6 Q. -- of Corporate Development?</p> <p>7 And did that monthly report typically</p> <p>8 include an update on the Medicare Working Group?</p> <p>9 A. If there were events that warranted</p> <p>10 their inclusion.</p> <p>11 Q. Okay. What types of events warranted</p> <p>12 inclusion in your monthly update to Mr.</p> <p>13 Moorehead?</p> <p>14 A. If there -- if there was a pending</p> <p>15 legislation that would have a -- potentially a</p> <p>16 significant financial impact, you would at least</p> <p>17 put it in your monthly report so he would be</p> <p>18 aware of it.</p> <p>19 Q. And what would be the purpose of making</p> <p>20 Mr. Moorehead aware of that legislation, for</p> <p>21 example?</p> <p>22 A. If his boss came to see him and said,</p>

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<p style="text-align: right;">Page 242</p> <p>1 "What about HR 321," that Dick would not be 2 embarrassed? 3 Q. Okay, was it your understanding that 4 Mr. Moorehead and some of his superiors were 5 interested in the subject of Medicare and 6 Medicaid reform? 7 MS. TABACCHI: Object to the form. 8 MR. SOFFER: Objection, calls for 9 speculation. 10 THE WITNESS: Rephrase? 11 BY MS. FORD: 12 Q. Did you understand my question? 13 A. Yes. 14 Q. Okay. Then if you -- okay, then you 15 may answer. 16 MS. TABACCHI: Same objection. 17 THE WITNESS: Anything that would have 18 a negative financial impact, management would be 19 concerned about. 20 BY MS. FORD: 21 Q. So was that -- is that a yes? 22 A. Yes.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. Okay. How did it -- how did it end? 2 A. It just -- in my opinion, it died due 3 to lack of direction. 4 Q. Okay, so you had what would have been 5 one of your last meetings, and another meeting 6 just never got scheduled? Was it something like 7 -- of that nature? 8 A. Yes. 9 Q. Okay. When you first got the 10 assignment from Mr. Moorehead to head up the 11 Medicare Working Group, did you do anything to 12 educate yourself about the issues that would be 13 discussed in the Medicare Working Group? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: I think I asked for 16 background documents from the divisions. 17 BY MS. FORD: 18 Q. Okay, and do you recall who you would 19 have made that request from -- or made the 20 request to? 21 A. I would have made the request to Rich 22 to get me some information.</p>
<p style="text-align: right;">Page 243</p> <p>1 Q. Okay. Did you ever have any 2 discussions with Mr. Moorehead about any 3 particular legislation? 4 A. I do not recall. 5 Q. Okay. Did Mr. Moorehead ever indicate 6 to you that he was taking the information that 7 you provided him and passing it up the chain? 8 A. No. 9 Q. Did you ever have a meeting with anyone 10 who was above Mr. Moorehead's level? 11 MS. TABACCHI: Object to the form. 12 BY MS. FORD: 13 Q. I'll ask you more specific. About the 14 Medicare Working Group? 15 A. No. 16 Q. About Medicare or Medicaid 17 reimbursement generally? 18 A. No. 19 Q. You indicated that the Medicare Working 20 Group was discontinued in late '97. Did someone 21 tell you to disband the group? 22 A. No.</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. Okay. And is it your recollection that 2 he did in fact get you some background 3 information? 4 A. Yes. 5 Q. Okay, and do you recall the nature of 6 those background documents? 7 A. I think that the AMA stuff was 8 provided. 9 Q. Did you make an attempt at that point 10 to learn about the current reimbursement system? 11 MS. TABACCHI: Object -- 12 THE WITNESS: No. 13 BY MS. FORD: 14 Q. I think you testified earlier that Mr. 15 Rieger's primarily responsible for generating the 16 minutes of the meeting; is that correct? 17 A. That is accurate. 18 Q. Was there anyone responsible for 19 maintaining the minutes, keeping them? 20 A. Keeping them? Keeping them? You mean 21 keeping a file copy? 22 Q. Keeping a file copy.</p>

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<p style="text-align: right;">Page 246</p> <p>1 A. Mr. Rieger.</p> <p>2 Q. Okay. Was Mr. Rieger similarly</p> <p>3 responsible for distributing the minutes?</p> <p>4 A. I'm going to sound sexist here. Our</p> <p>5 admini -- our admin was responsible for</p> <p>6 distributing the minutes.</p> <p>7 Q. Okay, who was responsible for directing</p> <p>8 your admin to distribute the minutes?</p> <p>9 A. Rich.</p> <p>10 Q. Rich. And what -- who was responsible</p> <p>11 for determining who the minutes would be</p> <p>12 distributed to?</p> <p>13 A. We followed the protocol that was on</p> <p>14 the memo, if -- you know, double asterisk, single</p> <p>15 asterisk, no asterisk, to the best of my</p> <p>16 knowledge.</p> <p>17 Q. And so what does that mean exactly, the</p> <p>18 term -- in terms of distribution of the minutes?</p> <p>19 A. I'm sorry. Everybody that was a member</p> <p>20 of the group should have gotten a copy of the</p> <p>21 minutes for every meeting.</p> <p>22 Q. Okay. I meant to tell you at the</p>	<p style="text-align: right;">Page 248</p> <p>1 Buell on November 21st, 1996. Is that correct?</p> <p>2 A. I'd have to go through the documents to</p> <p>3 agree with you.</p> <p>4 Q. Okay, if you want to turn to page 2 --</p> <p>5 A. Okay.</p> <p>6 Q. -- and if you'd look up on the top</p> <p>7 right-hand corner, it's --</p> <p>8 A. Page 2, okay.</p> <p>9 MR. SOFFER: What's the Bates page?</p> <p>10 MS. FORD: The Bates is ABT 53172.</p> <p>11 MS. TABACCHI: Or?</p> <p>12 MR. SOFFER: Yeah</p> <p>13 MS. FORD: Or 53316.</p> <p>14 THE WITNESS: 53316.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Yes.</p> <p>17 A. Okay.</p> <p>18 Q. Okay. So up in the top right-hand</p> <p>19 corner, in the -- next to "firm," it says, "Don</p> <p>20 Buell --</p> <p>21 A. Um-hum.</p> <p>22 Q. -- to Jim Miller --</p>
<p style="text-align: right;">Page 247</p> <p>1 outset I might have a pause from time-to-time.</p> <p>2 I'm trying not to retread any ground that you</p> <p>3 covered this morning unless I have some more</p> <p>4 specific questions.</p> <p>5 A. I'd be most appreciative.</p> <p>6 MR. SOFFER: We'd all be.</p> <p>7 MS. FORD: So if you can just give me a</p> <p>8 minute to get the right document.</p> <p>9 THE WITNESS: We'll give you all the</p> <p>10 time you want.</p> <p>11 BY MS. FORD:</p> <p>12 Q. I'm going to ask you a few more</p> <p>13 questions about Exhibit Miller 1167, which you</p> <p>14 should have in front of you. It's a memo --</p> <p>15 excuse me. It's an interoffice correspondence</p> <p>16 dated November 21st, 1996 on your letterhead.</p> <p>17 Do you see that document?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Okay, great. And I believe that your</p> <p>20 earlier testimony -- through your earlier</p> <p>21 testimony, you established that this memorandum</p> <p>22 is a cover to a memorandum sent to you by Don</p>	<p style="text-align: right;">Page 249</p> <p>1 A. Yes.</p> <p>2 Q. -- re report on meeting of the</p> <p>3 AMA/Industry Round Table Steering Committee." Is</p> <p>4 that accurate?</p> <p>5 A. That's what it says.</p> <p>6 Q. Okay. Do you remember this document</p> <p>7 from a little bit earlier today or do you want to</p> <p>8 take a minute to refresh your recollection?</p> <p>9 A. No, I remember this document.</p> <p>10 Q. And does there appear to be a memo from</p> <p>11 Mr. Buell to you updating you on the AMA/Industry</p> <p>12 Round Table Steering Committee?</p> <p>13 A. It appears to be documentation of a</p> <p>14 meeting, yes.</p> <p>15 Q. Now, if you turn back to page 1 of the</p> <p>16 exhibit, 55315, we're back to the interoffice</p> <p>17 correspondence on your letterhead to what appears</p> <p>18 to be members of the Medicare Working Group; is</p> <p>19 that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. And the re line says, "Relating</p> <p>22 to Monday's meeting, 11/25/96, on Medicare</p>

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<p style="text-align: right;">Page 250</p> <p>1 reform, Don Buell's comments." And then 2 following that, it says, "Following is some 3 background material for the meeting on Monday." 4 Did I read that accurately? 5 A. That is correct. 6 Q. Okay. And you indicate that it's -- 7 you're incorporating a three-page attachment? 8 A. That is correct. 9 Q. Okay. So does it appear that you are 10 forwarding to members of the Medicare Working 11 Group a memo that was provided to you by Don 12 Buell? 13 A. That is correct. 14 Q. Okay. Do you know why Mr. Buell was 15 reporting to you on the AMA/Industry Round Table 16 Steering Committee? 17 MR. SOFFER: Objection, calls for 18 speculation. 19 THE WITNESS: I do not recall. 20 BY MS. FORD: 21 Q. Okay, do you recall asking him to 22 report to you on the AMA/Industry Round Table</p>	<p style="text-align: right;">Page 252</p> <p>1 Abbott. 2 BY MS. FORD: 3 Q. And if it was important to the -- 4 Pharmaceutical Division, is that what you said? 5 A. (Witness nodding.) 6 Q. Do you mean by that Pharmaceutical 7 Products Division? 8 A. Yes. 9 Q. Okay. So if it was only important to 10 the Pharmaceutical Products Division, why was it 11 being elevated to a cross-divisional group such 12 as the Medicare Working Group? 13 MS. TABACCHI: Object to the form. 14 MR. SOFFER: Objection, calls for 15 speculation. 16 THE WITNESS: Many of the divisions 17 sell products to physicians. So if you offended 18 the physician community, you could affect more 19 divisions than the Pharmaceutical Division. 20 BY MS. FORD: 21 Q. So in the -- in the vein of information 22 sharing, was it your understanding that it was</p>
<p style="text-align: right;">Page 251</p> <p>1 Steering -- 2 A. That is a logical conclusion. 3 Q. Okay. Did Mr. Buell report to you? 4 A. No. 5 Q. Did you have any connection with Mr. 6 Buell outside of the Medicare Working Group? 7 MS. TABACCHI: Object to the form. 8 BY MS. FORD: 9 Q. Did you work together on any other 10 projects? 11 A. Not that I recall. 12 Q. Okay. So in terms of a professional 13 relationship with Mr. Buell, was that limited to 14 the Medicare Working Group? 15 A. To the best of my knowledge, yes. 16 Q. Okay. Did you consider the 17 AMA/Industry Round Table Steering Committee's 18 work to be of importance to the Medicare Working 19 Group? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: It was presented as 22 important to the Pharmaceutical Division of</p>	<p style="text-align: right;">Page 253</p> <p>1 important for all the divisions of Abbott to be 2 aware of the AMA -- the work of the AMA's 3 Steering Committee? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: I can't answer for all 6 the divisions. 7 BY MS. FORD: 8 Q. Okay, let's -- looking at your 9 distribution list on page 1, did you limit this 10 to representatives of PPD? 11 A. No. 12 Q. Okay. It looks like from the list and 13 from what we've established earlier, there are 14 members of several Abbott divisions on the 15 distribution list; is that correct? 16 A. That is correct. 17 Q. Okay. Was it your habit to forward 18 them information that you thought would be 19 useless to them? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: We shared all information 22 that would be discussed at a meeting.</p>

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<p style="text-align: right;">Page 254</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay. If you look on page 1 of Mr.</p> <p>3 Buell's memo, which is again Abbott 53316, a</p> <p>4 couple of lines after the heading "Executive</p> <p>5 Summary," it says, "The AMA stated that it would</p> <p>6 like to see this committee, number one, find</p> <p>7 common goals to advance in the upcoming policy</p> <p>8 debate on Medicare and Medicaid."</p> <p>9 Did I read that correctly?</p> <p>10 A. That's what it -- as stated.</p> <p>11 Q. Okay. And then further down on the</p> <p>12 page, if you look at the third paragraph from the</p> <p>13 bottom, Mr. Buell wrote, "AMA's goals appear to</p> <p>14 be to get industry support for its goals, both in</p> <p>15 lobbying efforts and financially."</p> <p>16 Did I read that accurately?</p> <p>17 A. As stated.</p> <p>18 Q. Okay. Were you involved in the process</p> <p>19 of deciding whether Abbott would partner with the</p> <p>20 AMA on its Medicare/Medicaid lobbying efforts?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I would answer no.</p>	<p style="text-align: right;">Page 256</p> <p>1 BY MS. FORD:</p> <p>2 Q. If you turn to Page 2 of Mr. Buell's</p> <p>3 memo, ABT 53317, about halfway down the page it</p> <p>4 says, "It was agreed that," and then the third</p> <p>5 bullet point says "There would be dues of 5,000</p> <p>6 to \$10,000 for any manufacturer who wanted to be</p> <p>7 a part of the Steering Committee."</p> <p>8 Did I read that accurately?</p> <p>9 A. As stated.</p> <p>10 Q. Okay, do you know whether Abbott became</p> <p>11 part of the Steering Committee?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not know.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Okay. If you'd turn to the last page</p> <p>16 of the exhibit, which is ABT 53318, the very last</p> <p>17 paragraph, it says, "I believe it will be</p> <p>18 difficult to get the Pharmaceutical members of</p> <p>19 the Steering Committee to agree among themselves</p> <p>20 on priorities for Medicare much less get AMA to</p> <p>21 go along with any of it. However, it is an</p> <p>22 opportunity we should not miss. Perhaps, if we</p>
<p style="text-align: right;">Page 255</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay, was that a decision that was made</p> <p>3 by the Medicare Working Group?</p> <p>4 A. No.</p> <p>5 Q. Okay, did you -- was it your</p> <p>6 understanding that Abbott did partner in the</p> <p>7 effort with the AMA's Steering Committee on</p> <p>8 Medicare/Medicaid reform?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I do not know.</p> <p>11 BY MS. FORD:</p> <p>12 Q. Okay. Do you know whether Abbott</p> <p>13 provided financial assistance to the -- to the</p> <p>14 AMA Steering Committee?</p> <p>15 A. I do not know.</p> <p>16 Q. Okay. Do you know whether anyone from</p> <p>17 Abbott participated as part of the policy</p> <p>18 Steering Committee?</p> <p>19 A. Of the AMA?</p> <p>20 Q. AMA, yes.</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I do not know.</p>	<p style="text-align: right;">Page 257</p> <p>1 could just get AMA to endorse 'access' for</p> <p>2 patients, 'access' to the physician of their</p> <p>3 choice and to the medical technologies best</p> <p>4 suited for their individual conditions, it would</p> <p>5 be a major accomplishment. Thanks again for</p> <p>6 setting up the November 25th meeting."</p> <p>7 Did I read that accurately?</p> <p>8 A. As stated.</p> <p>9 Q. Okay, was it your understanding at this</p> <p>10 time that Abbott continued to participate in the</p> <p>11 AMA Steering Committee?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I do not know if Abbott</p> <p>14 was a member of the Steering Committee.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Okay. We -- you testified earlier</p> <p>17 about the creation of of policy statement by</p> <p>18 Abbott to be submitted to the AMA; is that</p> <p>19 correct?</p> <p>20 A. There was a draft of a policy</p> <p>21 statement.</p> <p>22 Q. Okay. To your understanding, it was in</p>

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<p style="text-align: right;">Page 258</p> <p>1 connection with the AMA/Industry Round Table</p> <p>2 Steering Committee?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. FORD:</p> <p>6 Q. And I believe you indicated that the</p> <p>7 draft of that policy was generated by the</p> <p>8 Medicare Working Group; is that correct?</p> <p>9 A. It was generated by the</p> <p>10 representatives, yes.</p> <p>11 Q. If you could take a look at Exhibit</p> <p>12 Miller 1169, which you should have in front of</p> <p>13 you -- yeah, I think that's it.</p> <p>14 A. Um-hum.</p> <p>15 Q. You had talked with Mr. Sisneros about</p> <p>16 this proposed Abbott position on Medicare reform</p> <p>17 and the process for sending it for approval</p> <p>18 through the various Abbott divisions. Is that an</p> <p>19 accurate summary of your earlier testimony?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, and I believe you indicated that</p> <p>22 the document was never approved; is that correct?</p>	<p style="text-align: right;">Page 260</p> <p>1 paper approved through Abbott; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And how did you find out that</p> <p>4 the proposed Abbott position on Medicare reform</p> <p>5 was not going to be approved?</p> <p>6 A. There were discussions with Public</p> <p>7 Affairs, and then it was given back to the</p> <p>8 Pharmaceutical Division.</p> <p>9 Q. And who was involved in the discussions</p> <p>10 with Public Affairs?</p> <p>11 A. All I know is I was there.</p> <p>12 Q. Okay. Do you recall anyone else being</p> <p>13 there?</p> <p>14 A. I cannot tell you who was there.</p> <p>15 Q. Okay. But do you recall anyone else</p> <p>16 being there?</p> <p>17 A. Yes.</p> <p>18 Q. I'm not trying to trick you. I know</p> <p>19 it's late in the day. You were not alone?</p> <p>20 A. I was not alone.</p> <p>21 Q. Okay, and was this discussion in</p> <p>22 person?</p>
<p style="text-align: right;">Page 259</p> <p>1 A. To the best of my knowledge, it was</p> <p>2 never approved.</p> <p>3 Q. And when you said "the document," were</p> <p>4 you referring to the "Proposed Abbott position on</p> <p>5 Medicare reform"?</p> <p>6 A. Yes.</p> <p>7 Q. And that would be page 2 of Exhibit --</p> <p>8 excuse me, pages 2 and 3 of Exhibit Miller 1169?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what was your understanding</p> <p>11 of why the proposed Abbott position on Medicare</p> <p>12 reform was never approved?</p> <p>13 A. I was not in those discussions.</p> <p>14 Q. Regardless of whether you were in the</p> <p>15 discussions, do you have an understanding of why</p> <p>16 the proposed position on Medicare reform for</p> <p>17 Abbott was never approved?</p> <p>18 A. I'd be speculating.</p> <p>19 Q. Okay. So the Medicare Working Group</p> <p>20 created the position, and from Exhibit Miller</p> <p>21 1169, it looks like you sent a memo to Ms. Boyd</p> <p>22 proposing a process for getting the position</p>	<p style="text-align: right;">Page 261</p> <p>1 A. Yes.</p> <p>2 Q. And was there one discussion?</p> <p>3 A. I remember one discussion.</p> <p>4 Q. Do you remember any follow-up</p> <p>5 discussions?</p> <p>6 A. No.</p> <p>7 Q. Okay, and what was -- what was the</p> <p>8 content of the discussion, to the best of your</p> <p>9 recollection?</p> <p>10 A. It dealt with the approval process, it</p> <p>11 dealt with the pros and cons of taking the</p> <p>12 position.</p> <p>13 Q. Okay, and who -- do you have an</p> <p>14 understanding of who disliked the proposed</p> <p>15 position on Medicare reform?</p> <p>16 A. No.</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Was it your understanding that Public</p> <p>20 Affairs was saying, We can't approve this?</p> <p>21 A. No.</p> <p>22 Q. Was it your understanding that the</p>

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<p style="text-align: right;">Page 262</p> <p>1 Pharmaceutical Products Division was not happy 2 with the proposal? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I'd be speculating. 5 BY MS. FORD: 6 Q. Okay. I'm not trying to trick you 7 here. I'm just trying to figure out the Medicare 8 Working Group has gone to all this trouble, 9 you've generated this proposal, you've taken it 10 to various divisions to shop it around, and 11 somebody puts a quash on it, and -- 12 A. Well, and, you know, I'm not -- 13 MS. TABACCHI: Object to the form. 14 MR. SOFFER: Let's wait for a question. 15 THE WITNESS: Okay. 16 BY MS. FORD: 17 Q. And I'm just trying to understand to 18 the best of your recollection what happened in 19 this process to stop Abbott from putting for the 20 their proposal on Medicare reform? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: The last step that I can</p>	<p style="text-align: right;">Page 264</p> <p>1 THE WITNESS: I do not know. 2 MS. FORD: I think we're up to Exhibit 3 Miller 1170 now, so I'm going to mark this 4 document and introduce it. 5 (Exhibit Miller 1170 was marked 6 for ID) 7 BY MS. FORD: 8 Q. You can take a look at that. 9 A. (Witness reviewing document.) 10 Q. You're welcome to read the document in 11 its entirety, but for purpose of -- I'd happy to 12 point you to a specific area of the document -- 13 A. Go ahead. 14 Q. -- I wanted to ask you about. 15 A. Thank you. 16 Q. For the record, this is document ABT 17 53140 through ABT 53142. 18 A. Agreed. 19 Q. Do you recognize this document? 20 A. No. I mean it looks -- no. 21 Q. Okay, for the record, it's an internet 22 office correspondence dated December 13th, 1996</p>
<p style="text-align: right;">Page 263</p> <p>1 testify to that I know happened was the meeting 2 with Public Affairs. 3 BY MS. FORD: 4 Q. And if you were to meet with Public 5 Affairs, would that typically be with the head of 6 Public Affairs? 7 A. I do not recall. 8 Q. Okay. To your knowledge, was there 9 anything in particular about the proposal that 10 was objected to? 11 A. No. 12 Q. To your knowledge, did Abbott generate 13 another proposal on Medicare reform? 14 A. I do not know. 15 Q. Okay. So you weren't involved in any 16 process after this was disapproved to generate a 17 new proposal? 18 A. That is correct. 19 Q. Okay, do you if anyone was involved in 20 a process to generate a new Medicare reform 21 position on behalf of Abbott? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 265</p> <p>1 from Richard Rieger to members of the Medicare 2 Working Group, and you are copied on this 3 document. Is that correct? 4 A. That is correct. 5 Q. And do you believe that you would have 6 received this document in the ordinary course of 7 business? 8 A. Yes. 9 Q. Okay. About halfway down, it says, 10 "For next week's meeting, we would like to 11 propose the following agenda," and then the 12 second bullet point says, "Abbott's role in 13 future participation on the AMA/Industry Round 14 Table Steering Committee," and the third bullet 15 point says, "Next steps in further developing the 16 Abbott position re Medicare reform." 17 Did I read that accurately? 18 A. As stated. 19 Q. Do you recall attending the January 20 meeting of the Medicare Working Group? 21 A. I do not know. 22 Q. Okay. Do you recall attending a</p>

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<p style="text-align: right;">Page 266</p> <p>1 meeting of the Medicare Working Group where 2 Abbott's role in future participation in 3 AMA/Industry Round Table Steering Committee was 4 addressed? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I do not know. 7 BY MS. FORD: 8 Q. Just so I make sure I understand, are 9 you saying you don't recall. 10 A. I don't recall. 11 Q. Okay. 12 A. I don't recall. 13 MS. FORD: I'm going to mark Exhibit 14 Miller 1171, and I ask you to take a look at that 15 document. 16 (Exhibit Miller 1171 was marked 17 for ID). 18 THE WITNESS: (Witness reviewing 19 document.) 20 MS. FORD: For the record, this is ABT 21 53217 through ABT 53238. 22 BY MS. FORD:</p>	<p style="text-align: right;">Page 268</p> <p>1 A. Yes. 2 Q. Do you recall in what context you've 3 heard of the Healthcare Leadership Council? 4 A. I believe Mr. Burnham was on it at one 5 time. 6 Q. And you're referencing Dwayne Burnham, 7 the CEO? 8 A. Yes. 9 Q. Okay. Do you know why members of the 10 Medicare Working Group would have been receiving 11 a copy of the Healthcare Leadership Council's 12 Principles For Effective Medicare Reform? 13 A. The flippant answer is we distributed 14 it. 15 Q. I'm sorry, I didn't hear you. 16 A. The flippant answer is we distributed 17 it. 18 Q. Okay. Do you have any idea why Mr. 19 Rieger would have distributed this to the members 20 of the Medicare Working Group? 21 A. I'd be guessing. 22 Q. To your knowledge, were any Abbott</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. Mr. Miller, do you recognize this 2 document? 3 A. No. 4 Q. It appears to be interoffice 5 correspondence from Richard Rieger dated February 6 10th, 1997 to the Medicare Working Group. Is 7 that correct? 8 A. That's as stated. 9 Q. As a member of the Medicare Working 10 Group, is it your expectation that you would have 11 received this document in the ordinary course of 12 business? 13 A. Yes. 14 Q. If you look at Item No. 1, it says, 15 "Attached are the following documents for your 16 review: No. 1) Healthcare Leadership Council 17 Principles For Effective Medicare Reform." 18 Are you familiar with the Healthcare 19 Leadership Council? 20 A. No. 21 Q. Have you ever heard of that group 22 before?</p>	<p style="text-align: right;">Page 269</p> <p>1 employees or officers, aside from Mr. Burnham, 2 members of the Healthcare Leadership Council? 3 A. I do not know. 4 Q. To your knowledge, was there a group 5 within Abbott formed to develop Abbott's position 6 on Medicare reform prior to the Medicare Working 7 Group? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I do not know. 10 BY MS. FORD: 11 Q. Okay. I'm going to show you a document 12 that's been previously marked in a prior 13 deposition as Plaintiffs' Exhibit 1121 and ask 14 you to take a look at that. 15 A. (Witness reviewing document). 16 MS. FORD: For the record, this is ABT 17 53263 through ABT 53275. 18 BY MS. FORD: 19 Q. Mr. Miller, this appears to be a 20 December 20th, 1996 interoffice correspondence 21 from Richard Rieger to members of the Medicare 22 Working Group; is that correct?</p>

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<p style="text-align: right;">Page 270</p> <p>1 A. As stated.</p> <p>2 Q. And you are copied on this document; is</p> <p>3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And, again, in the ordinary</p> <p>6 course of business, do you believe that you would</p> <p>7 have received a copy of this document?</p> <p>8 A. Yes.</p> <p>9 Q. It says, "Attached is the information</p> <p>10 that Mike Tootell referenced in our most recent</p> <p>11 Medicare Working Group meeting and which he asked</p> <p>12 me to circulate. It addresses the topic of</p> <p>13 average wholesale prices and competitive</p> <p>14 bidding."</p> <p>15 Did I read that accurately?</p> <p>16 A. As stated.</p> <p>17 Q. Okay. If you could turn to Page 2 of</p> <p>18 this exhibit?</p> <p>19 A. (Witness so doing).</p> <p>20 Q. It's titled, "Medicare Part B payment</p> <p>21 for drugs average wholesale price issue." Is</p> <p>22 that correct?</p>	<p style="text-align: right;">Page 272</p> <p>1 know.</p> <p>2 BY MS. FORD:</p> <p>3 Q. Okay. What was your understanding</p> <p>4 around December of 1996 about the basis of -- for</p> <p>5 which Medicare reimbursed for drugs?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I'm not sure I knew the</p> <p>8 specifics of any product.</p> <p>9 BY MS. FORD:</p> <p>10 Q. Okay. Did you understand around that</p> <p>11 time period that reimbursement was based on</p> <p>12 average wholesale price?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I do not know.</p> <p>15 BY MS. FORD:</p> <p>16 Q. Okay. When you received a copy of this</p> <p>17 document in or around December 20th of 1996,</p> <p>18 would it have been your common practice to review</p> <p>19 it?</p> <p>20 A. It would have been my common practice</p> <p>21 to read it, yes.</p> <p>22 Q. If you look about halfway down the page</p>
<p style="text-align: right;">Page 271</p> <p>1 A. As stated.</p> <p>2 Q. Okay, the first paragraph says,</p> <p>3 "Currently, Medicare pays for those drugs that</p> <p>4 are not reimbursed on a prospective payment basis</p> <p>5 or a cost basis at the lesser of the average</p> <p>6 wholesale price or the actual acquisition cost of</p> <p>7 the drug. In actuality, however, Medicare pays</p> <p>8 at the average wholesale price level because the</p> <p>9 program has not acquired acquisition cost</p> <p>10 information sufficient to establish reimbursement</p> <p>11 rates."</p> <p>12 Did I read that accurately?</p> <p>13 A. As stated.</p> <p>14 Q. Okay. Does this reflect your</p> <p>15 understanding in or around December 20th, 1996</p> <p>16 about how Medicare reimbursed for drugs?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 I'm sorry, did you say "reflect" or</p> <p>19 "refresh"?</p> <p>20 MS. FORD: Reflect.</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I'm going to say I don't</p>	<p style="text-align: right;">Page 273</p> <p>1 under the heading "Industry Options," it says,</p> <p>2 "The industry can, of course, attempt to maintain</p> <p>3 AWP as the payment measure for Medicare covered</p> <p>4 drugs and resist all efforts within Congress and</p> <p>5 HCFA to change the current formula and practice.</p> <p>6 In all likelihood, that is not a sustainable</p> <p>7 position, especially in light of the fraud and</p> <p>8 waste connotations the investigators have brought</p> <p>9 to this issue." Excuse me, "to the issue."</p> <p>10 "In addition, numerous people from</p> <p>11 within the industry have conceded publicly that</p> <p>12 AWP makes little sense as a basis for</p> <p>13 reimbursement. At the very least, it will be</p> <p>14 difficult to make a strong case for the retention</p> <p>15 of AWP as the determinant of Medicare payment</p> <p>16 for drugs."</p> <p>17 Did I read that accurately?</p> <p>18 A. As stated.</p> <p>19 Q. Okay. What was your understanding of</p> <p>20 the purpose for distributing this document to</p> <p>21 members of the Medicare Working Group?</p> <p>22 A. As I've stated previously, all</p>

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<p>1 documents that were to be discussed were 2 distributed to all members. 3 Q. Okay. And the cover member -- memo 4 says, "Attached is the information that Mike 5 Tootell referenced in our most recent Medicare 6 Working Group meeting and which he asked me to 7 circulate." 8 That's correct, isn't it? 9 A. That is as stated. 10 Q. Okay. Do you recall a discussion of 11 AWP-based reimbursement and industry options in 12 your -- 13 A. No. 14 Q. -- Medicare Working Group meeting? 15 A. No. 16 Q. To your knowledge, did the Medicare 17 Working Group adopt a position on reform efforts 18 for Medicare? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: No. 21 BY MS. FORD: 22 Q. Okay. You would agree with me, though,</p>	<p>1 Q. Okay, well, Mr. Rieger's cover memo, 2 which you indicated you most likely received a 3 copy of and read, says that, "This is being 4 circulated, as referenced in the most recent 5 Medicare Working Group meeting." 6 Does that lead you to believe that this 7 was a topic of discussion at a Medicare Working 8 Group meeting in or around December of 1996? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I don't know who prepared 11 the attachment. 12 BY MS. FORD: 13 Q. Okay. But I'm not really asking about 14 who prepared the attachment. 15 It -- the cover memo indicates that -- 16 that the attachment "is being circulated pursuant 17 to discussion that was held in a recent Medicare 18 Working Group meeting;" is that correct? 19 A. That's what it says. I believe that -- 20 that's what it says. 21 Q. Do you recall discussions of the 22 Medicare Working Group about proposals to change</p>
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<p>1 wouldn't you, that their -- the Medicare Working 2 Group was cognizant of this controversy around 3 AWP in -- in around December of '96? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: Yes. 6 BY MS. FORD: 7 Q. And that at least some members of the 8 industry were opposed to changing reimbursement 9 system away from an AWP-based system; is that 10 correct? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I cannot speak for the 13 industry. 14 BY MS. FORD: 15 Q. I'm not asking you to speak for them. 16 I'm just asking if you had an understanding that 17 at least some members of the pharmaceutical 18 industry were opposed to moving away from an AWP- 19 based reimbursement system? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I do not know. 22 BY MS. FORD:</p>	<p>1 the reimbursement system away from AWP? 2 A. I do not recall the specifics. 3 Q. Okay. Regardless of whether you recall 4 the specifics of who said what and when, do you 5 recall a discussion of the topic generally? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: Yes. 8 BY MS. FORD: 9 Q. Okay. Do you believe that was a topic 10 of discussion at more than one Medicare Working 11 Group meeting? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I do not recall. 14 BY MS. FORD: 15 Q. Okay. Do you also recall a discussion 16 of industry options in opposing a change away 17 from an AWP-based Medicare reimbursement system? 18 MR. SOFFER: Objection, vague. 19 MS. TABACCHI: Object to the form. 20 First would you mind re-reading the 21 question? 22 (Record read.)</p>

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<p>1 MS. TABACCHI: Object to the form.</p> <p>2 MS. FORD: One objection is sufficient.</p> <p>3 MS. TABACCHI: Right.</p> <p>4 MS. FORD: You already objected.</p> <p>5 MS. TABACCHI: You can never have too</p> <p>6 many objections.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Do you recall any specifics about the</p> <p>10 particular options that were discussed?</p> <p>11 A. The documents that you have already</p> <p>12 shown me talk about a rebate-based system versus</p> <p>13 AWP.</p> <p>14 Q. Okay, do you recall any other options</p> <p>15 that were discussed?</p> <p>16 A. And we've talked about acquisition</p> <p>17 cost, we've talked about actual cost.</p> <p>18 Q. And did the Medicare Working Group come</p> <p>19 to some consensus about what would be the best</p> <p>20 alternative if the reimbursement system were</p> <p>21 going to change?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p>1 was generated by the Medicare Working Group, did</p> <p>2 the Medicare Working Group generate any other</p> <p>3 policy statements?</p> <p>4 A. No.</p> <p>5 Q. Any other position papers?</p> <p>6 A. No.</p> <p>7 Q. To your knowledge, other than that</p> <p>8 proposed policy statement and the minutes, did it</p> <p>9 generate any other written documentation?</p> <p>10 A. No.</p> <p>11 MS. FORD: I'm getting an indication</p> <p>12 from the videographer that we've got just a few</p> <p>13 minutes left on the tape. So we'll go ahead and</p> <p>14 take a break, and I'll find my next exhibit, and</p> <p>15 we'll resume.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE VIDEOGRAPHER: We are off the</p> <p>18 record at 3:57 at the end of Tape No. 4.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record at 4:07 p.m. with the start of Tape No. 5.</p> <p>22 BY MS. FORD:</p>
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<p>1 THE WITNESS: I do not recall.</p> <p>2 BY MS. FORD:</p> <p>3 Q. We've talked generally about the</p> <p>4 keeping of minutes for the Medicare Working</p> <p>5 Group, but in addition to minutes, did you take</p> <p>6 handwritten notes at the meetings you attended?</p> <p>7 A. That was my general practice.</p> <p>8 Q. Okay. And was it your general practice</p> <p>9 to maintain those notes?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: I would give my notes to</p> <p>12 Rich, and he would incorporate them in the</p> <p>13 minutes of the meeting.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Okay, and then do you know what</p> <p>16 happened to your notes after that point?</p> <p>17 A. No.</p> <p>18 Q. So, to your knowledge, Mr. Rieger did</p> <p>19 not give them back to you?</p> <p>20 A. I do not recall.</p> <p>21 Q. Okay. Other than the proposed Abbott</p> <p>22 position on Medicare reform that you indicated</p>	<p>1 Q. Mr. Miller, could I ask you to take a</p> <p>2 look at Exhibit Miller 1163, which you should</p> <p>3 have in front of you? It's -- a March 7th, 1997</p> <p>4 cover memo should be the first page of that</p> <p>5 exhibit.</p> <p>6 A. Exhibit Miller 1164. Exhibit Miller</p> <p>7 1163?</p> <p>8 Q. Correct.</p> <p>9 A. Correct.</p> <p>10 Q. And this is a document you discussed</p> <p>11 with Mr. Sisneros earlier today. And the cover</p> <p>12 page indicates -- the coverage page is from Mr.</p> <p>13 Rieger, and it indicates that you drafted the</p> <p>14 meeting minutes from the March 6th, 1997 meeting;</p> <p>15 is that correct?</p> <p>16 A. As stated.</p> <p>17 Q. And then attached to that cover page</p> <p>18 are the minutes that you drafted; is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And under the first bullet point on ABT</p> <p>22 52841, it says, "Changing the reimbursement price</p>

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<p style="text-align: right;">Page 282</p> <p>1 for drugs administered in physicians' offices 2 from AWP." 3 Did I read that accurately? 4 A. As stated. 5 Q. Okay. And the first point under there 6 says, "Abbott/TAP has approximately \$900 million 7 in sales which would be affect by this proposal. 8 The two largest products are Lupron and 9 Calcijex." 10 How -- what is your understanding of 11 how Abbott or TAP would have been affected by 12 changing reimbursement price for drugs 13 administered in physicians' offices from AWP? 14 THE REPORTER: You know what? Can you 15 repeat the end of your question? 16 MS. FORD: Sure. 17 THE REPORTER: I'm sorry, I'm just 18 getting tired. 19 BY MS. FORD: 20 Q. What was your understanding of how 21 changing reimbursement price for drugs 22 administered in physicians' offices from AWP</p>	<p style="text-align: right;">Page 284</p> <p>1 THE WITNESS: I cannot answer the 2 question without you telling me how you're going 3 to change it. 4 BY MS. FORD: 5 Q. Okay. Well, at the time, in around 6 March 6th of 1997 -- 7 A. Um-hum. 8 Q. -- President Clinton had a proposal to 9 change from AWP reimbursement to actual 10 acquisition cost. Do -- do you recall that 11 proposal? 12 A. No, but go ahead. 13 Q. Okay. So assume with me then, if the 14 change was going to be from AWP to actual 15 acquisition cost, how would such a change 16 negatively affect Abbott's sales? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Without knowing the 19 number that was calculated for the actual 20 acquisition cost, I cannot answer it. 21 BY MS. FORD: 22 Q. Okay. Well, let me ask you, you wrote</p>
<p style="text-align: right;">Page 283</p> <p>1 would impact Abbott and/or TAP? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Any change could have 4 potentially affected the profitability of the two 5 products. 6 BY MS. FORD: 7 Q. Okay, so the \$900 million plus 8 reference is referring to a negative effect; is 9 that accurate? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: It's quantifying the 12 sales of the two products. 13 BY MS. FORD: 14 Q. Sales that would be negatively impacted 15 -- 16 A. Yes. 17 Q. -- is that accurate? 18 Okay. And how is it -- if you could 19 explain to me your understanding of how a change 20 in reimbursement from AWP would affect Abbott's 21 sales? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 285</p> <p>1 these minutes on March -- the March 6th, 1997 2 meeting? 3 A. Um-hum. 4 Q. What were you referring to when you 5 said, "The change from reimbursement from AWP 6 could negatively impact Abbott/TAP sales by \$900 7 million"? 8 A. No, no, no. 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: It does not say that. 11 BY MS. FORD: 12 Q. Okay. Why don't you go ahead and then 13 explain to me what bullet point one means and how 14 it would affect Abbott's sales? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: What the first paragraph 17 -- first stop point appears to say -- okay, I'm 18 going back -- is that we had \$900 million of 19 sales at that point in time on Lupron and 20 Calcijex, and that's all that's quantified in 21 that statement. There's no quantification of a 22 negative impact.</p>

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<p style="text-align: right;">Page 286</p> <p>1 BY MS. FORD:</p> <p>2 Q. Okay. Correct me if I'm wrong, but a</p> <p>3 few minutes ago you said if there was going to be</p> <p>4 an impact on Abbott's sales that you were</p> <p>5 quantifying here, it would be a negative impact;</p> <p>6 is that accurate?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Let me ask it this way. Would you have</p> <p>10 been concerned if there would have been an upside</p> <p>11 to a change in AWP reimbursement?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, and what would be the nature of</p> <p>14 your concern?</p> <p>15 A. You'd have to quantify how it would</p> <p>16 impact Abbott and then also impact its</p> <p>17 competitors.</p> <p>18 Q. Okay. I guess let's step back and</p> <p>19 speak a little more generally. How would any</p> <p>20 change in reimbursement to providers from</p> <p>21 Medicare affect a drug manufacturer such as</p> <p>22 Abbott?</p>	<p style="text-align: right;">Page 288</p> <p>1 that they want to charge to providers; is that</p> <p>2 accurate?</p> <p>3 A. Right.</p> <p>4 Q. So a change to reimbursement would not</p> <p>5 impact the price at which Abbott sold its drugs,</p> <p>6 would it?</p> <p>7 A. If a physician office does not recover</p> <p>8 its cost, it's highly unlikely it's going to stay</p> <p>9 in business or prescribe those products.</p> <p>10 Q. Okay, but would a change to the</p> <p>11 reimbursement system affecting all of Medicare</p> <p>12 single out Abbott and have a negative impact only</p> <p>13 on Abbott?</p> <p>14 A. No.</p> <p>15 Q. Okay, so what I'm trying to understand</p> <p>16 here is what you put under bullet point one of</p> <p>17 your -- of the minutes that you drafted, that</p> <p>18 "Abbott/TAP has approximately \$900 million in</p> <p>19 sales which would be affected by this proposal."</p> <p>20 What was your understanding of how</p> <p>21 those sales would be affected by changing</p> <p>22 reimbursement away from an AWP-based system?</p>
<p style="text-align: right;">Page 287</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: You -- I'd have to make a</p> <p>3 generalization. You know, a reduction in price</p> <p>4 is unfavorable generally. It could be positive</p> <p>5 if volume increases more than price goes down.</p> <p>6 BY MS. FORD:</p> <p>7 Q. Was Abbott reimbursed directly by</p> <p>8 Medicare?</p> <p>9 A. No.</p> <p>10 Q. Okay, so we're not talking about a</p> <p>11 change in reimbursement that would affect Abbott</p> <p>12 directly; is that accurate?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: These are products</p> <p>15 administered in a doctor's office. It is my</p> <p>16 understanding they do not get any other fees for</p> <p>17 service except the product reimbursement.</p> <p>18 BY MS. FORD:</p> <p>19 Q. Okay, but Abbott manufacturers the</p> <p>20 drug, right?</p> <p>21 A. Right.</p> <p>22 Q. And Abbott sets the price of that drug</p>	<p style="text-align: right;">Page 289</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: The perception was that</p> <p>3 it would be negative to Abbott because it would</p> <p>4 be a reduction to the total system revenues.</p> <p>5 BY MS. FORD:</p> <p>6 Q. And can you -- I'm going to try to get</p> <p>7 you to connect those dots for me. The doctor</p> <p>8 gets reimbursed less --</p> <p>9 A. Right.</p> <p>10 Q. -- if the reimbursement system is</p> <p>11 changed away from AWP?</p> <p>12 A. Potentially.</p> <p>13 Q. Okay. And how is that going to impact</p> <p>14 Abbott's sales?</p> <p>15 A. Again, the physician must make -- must</p> <p>16 recover his cost, get an adequate return, or he's</p> <p>17 in the going to stay in business.</p> <p>18 Q. Okay. So was the focus of Abbott's</p> <p>19 concerns about physicians staying in business?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: It was on the total</p> <p>22 revenue in that segment of business.</p>

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<p style="text-align: right;">Page 290</p> <p>1 BY MS. FORD:</p> <p>2 Q. And let's go on to bullet number two.</p> <p>3 "The implementation of a rebate system similar to</p> <p>4 Medicaid was discussed as a potential alternative</p> <p>5 to put forward. TAP believes that rebate system</p> <p>6 would have a larger negative impact on sales than</p> <p>7 changing to acquisition cost."</p> <p>8 Do you recall a discussion at the</p> <p>9 Medicare Working Group meeting on March 6th</p> <p>10 regarding --</p> <p>11 A. That was TAP's position.</p> <p>12 Q. Okay, do you recall who expressed --</p> <p>13 A. No.</p> <p>14 Q. -- that position at the meeting?</p> <p>15 A. No.</p> <p>16 Q. Do you recall anyone, aside from Mr.</p> <p>17 Campbell, who participated in Medicare Working</p> <p>18 Group meetings on behalf of TAP?</p> <p>19 A. I've answered that question. No.</p> <p>20 Q. Okay. So is it logical to assume that</p> <p>21 it was Mr. Campbell who was putting forth TAP's</p> <p>22 position?</p>	<p style="text-align: right;">Page 292</p> <p>1 BY MS. FORD:</p> <p>2 Q. And "acquisition cost plus" is in</p> <p>3 quotation marks.</p> <p>4 What was your understanding of what</p> <p>5 "acquisition cost plus" meant?</p> <p>6 A. I do not have an understanding.</p> <p>7 Q. Is it your testimony that when you</p> <p>8 drafted these minutes, you didn't have an</p> <p>9 understanding of what it meant or you don't</p> <p>10 recall it today?</p> <p>11 A. I don't recall it today.</p> <p>12 Q. Okay. Do you know whether this</p> <p>13 consensus was conveyed to anyone outside of the</p> <p>14 Medicare Working Group?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you recall any discussions, for</p> <p>17 example, with your -- with your superior about</p> <p>18 this consensus?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether Abbott took any</p> <p>21 actions to to promote the acquisition cost plus</p> <p>22 alternative to AWP-based reimbursement?</p>
<p style="text-align: right;">Page 291</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: Objection.</p> <p>3 BY MS. FORD:</p> <p>4 Q. Could it have been anyone else?</p> <p>5 MR. SOFFER: Objection.</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 BY MS. FORD:</p> <p>9 Q. Okay. And then the final point under</p> <p>10 this bullet is, "The group consensus was that</p> <p>11 'acquisition cost plus' would be the least</p> <p>12 favorable alternative to current Abbott/TAP</p> <p>13 business."</p> <p>14 Did I read that accurately?</p> <p>15 A. As stated.</p> <p>16 Q. And the acquisition --</p> <p>17 MS. THOMAS: Did you say "least</p> <p>18 favorable" or "least unfavorable"?</p> <p>19 MS. FORD: I meant to say "least</p> <p>20 unfavorable." I don't know what I said.</p> <p>21 THE WITNESS: That's what I heard.</p> <p>22 MS. FORD: Okay.</p>	<p style="text-align: right;">Page 293</p> <p>1 A. I do not know.</p> <p>2 Q. To your knowledge, did the Medicare</p> <p>3 Working Group take any steps to promote the</p> <p>4 acquisition cost plus alternative to AWP-based</p> <p>5 reimbursement?</p> <p>6 A. The Working Group did not.</p> <p>7 Q. Okay. Do you have an understanding of</p> <p>8 why members of the Medicare Working Group</p> <p>9 preferred the AWP-based reimbursement system to</p> <p>10 an alternative?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 MR. SOFFER: Objection.</p> <p>13 THE WITNESS: I would be speculating.</p> <p>14 BY MS. FORD:</p> <p>15 Q. Did the Medicare Working Group discuss</p> <p>16 it?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: My answer is all change</p> <p>19 is difficult.</p> <p>20 BY MS. FORD:</p> <p>21 Q. Okay. Was it your understanding that</p> <p>22 Abbott would prefer the reimbursement system to</p>

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<p style="text-align: right;">Page 294</p> <p>1 stay as it was at that time, AWP?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I cannot speak for</p> <p>4 Abbott.</p> <p>5 BY MS. FORD:</p> <p>6 Q. Was it your understanding that members</p> <p>7 of the Medicare Working Group thought that</p> <p>8 maintaining the AWP-based reimbursement system</p> <p>9 would be preferable to Abbott?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 MR. SOFFER: Objection, calls for --</p> <p>12 THE WITNESS: Members of the Working</p> <p>13 Group expressed their opinion that AW -- staying</p> <p>14 with the current methods was preferable.</p> <p>15 BY MS. FORD:</p> <p>16 Q. And I believe you testified earlier</p> <p>17 that the Working Group was comprised of</p> <p>18 representatives of various Abbott divisions who</p> <p>19 had knowledge and/or expertise in reimbursement;</p> <p>20 is that correct?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 296</p> <p>1 any recollection of why you would ask Mr. Rieger</p> <p>2 to go verify this information?</p> <p>3 A. Yes. It was my nature.</p> <p>4 Q. Okay. So you would ask him to verify</p> <p>5 it just for your own peace of mind, perhaps?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall in fact whether</p> <p>8 this information was verified?</p> <p>9 A. I do not remember.</p> <p>10 Q. Do you recall any further action being</p> <p>11 taken with respect to your note here? After</p> <p>12 giving this over to Mr. Rieger, do you recall</p> <p>13 anything else happening --</p> <p>14 A. No.</p> <p>15 Q. -- with respect to this information?</p> <p>16 Mr. Miller, prior to preparing for your</p> <p>17 deposition or being contacted about your</p> <p>18 deposition, did you know that Abbott was being</p> <p>19 sued by the United States and by several states?</p> <p>20 MR. SOFFER: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I didn't know until</p>
<p style="text-align: right;">Page 295</p> <p>1 BY MS. FORD:</p> <p>2 Q. If you could take a look at Exhibit</p> <p>3 Miller 1165, which you should have in front of</p> <p>4 you and which I believe are the handwritten</p> <p>5 notes, the one page of your handwritten notes?</p> <p>6 A. Oh, yes.</p> <p>7 Q. I believe that you testified earlier</p> <p>8 that you gave this information to Mr. Rieger to</p> <p>9 verify; is that correct?</p> <p>10 A. That's my recollection.</p> <p>11 Q. Okay. Do you recall if it was in fact</p> <p>12 verified?</p> <p>13 A. I do not know.</p> <p>14 Q. Okay, did you give any instructions to</p> <p>15 him about how to verify the information or how to</p> <p>16 go about trying to verify it?</p> <p>17 A. No.</p> <p>18 Q. If in fact the information was</p> <p>19 verified, did you have a plan to use it in some</p> <p>20 way?</p> <p>21 A. I do not remember.</p> <p>22 Q. Okay. Sitting here today, do you have</p>	<p style="text-align: right;">Page 297</p> <p>1 Abbott Legal called me and said, You got --</p> <p>2 you're getting a subpoena.</p> <p>3 BY MS. FORD:</p> <p>4 Q. So you hadn't read anything in</p> <p>5 newspapers about --</p> <p>6 A. No.</p> <p>7 Q. -- average wholesale price litigation?</p> <p>8 A. No.</p> <p>9 Q. So there were no discussions in the</p> <p>10 Medicare Working Group about investigations into</p> <p>11 Abbott's pricing practices that you recall?</p> <p>12 A. Wait, wait, wait, wait, wait. Let me -</p> <p>13 - let's go back.</p> <p>14 Q. Okay.</p> <p>15 A. What time period?</p> <p>16 Q. Well --</p> <p>17 A. Are we talking today or --</p> <p>18 Q. My first question was today.</p> <p>19 A. Okay.</p> <p>20 Q. And then I went back to the time period</p> <p>21 of the Medicare Working Group --</p> <p>22 A. Okay, fine.</p>

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<p style="text-align: right;">Page 298</p> <p>1 Q. -- and asked whether there were any 2 discussions of the Medicare Working Group about 3 at that point investigations into Abbott's 4 pricing practices. 5 A. I do not recall. 6 Q. Okay. I'm going to hand to you what's 7 been previously marked as Plaintiff's Exhibit 8 1124 and ask you to just briefly look it over. 9 I'll point you to -- direct you to a specific 10 question in the document so you don't have to 11 read it in full, but if you'd like to, we'll 12 certainly give you the time to do that. 13 A. (Witness so doing). 14 Q. For the record, this is ABT 52710 15 through ABT 52725. This is a -- this appears to 16 be an interoffice correspondence from Mr. Rieger 17 to members of the Medicare Working Group; is that 18 correct? 19 A. That's what it states. 20 Q. Okay, and you again are copied on this 21 interoffice correspondence? 22 A. Yes.</p>	<p style="text-align: right;">Page 300</p> <p>1 A. No. 2 Q. Okay. 3 A. But it's in one of the other 4 attachments, but -- before. 5 Q. Okay. And I believe it's in one of the 6 other attachments that was made an exhibit here 7 today; is that right? 8 A. That's correct. 9 Q. And you indicated in response to Mr. 10 Sisneros, that being a one-page article, you 11 probably -- it would have been your practice to 12 review it. Is that accurate? 13 A. It would have been my practice to read 14 it, yes. 15 Q. Okay. Before I ask you specific 16 questions about this document, we had talked 17 about whether you're aware of investigations or 18 lawsuits related to Abbott's pricing practices; 19 is that accurate? 20 A. Yes. 21 Q. Okay, and you said that at least but 22 not prior to -- prior to being contacted about</p>
<p style="text-align: right;">Page 299</p> <p>1 Q. It says, "F.Y.I. Attached is updated 2 information that I received from Cindy Sensibaugh 3 in preparation for the 1/21/97 Medicare Working 4 Group meeting." 5 Did I read that accurately? 6 A. As stated. 7 Q. Okay. And, again, under the ordinary 8 course of business, do you believe that you would 9 have received a copy of this cover memorandum and 10 attachments? 11 A. Yes. 12 Q. Okay, and do you believe that you would 13 have reviewed this at least briefly in 14 preparation for the meeting? 15 A. I don't know. 16 Q. Okay. Well, let me ask you to turn to 17 page 3, which is ABT 52712. 18 A. This is our -- okay. 19 Q. This is dated January 13th, 1997 and 20 it's titled, "F.D.C reports -- 'The Pink Sheet.'" 21 Do you recall seeing this document 22 before?</p>	<p style="text-align: right;">Page 301</p> <p>1 your deposition, you were not aware of any such 2 investigations or lawsuits; is that accurate? 3 A. As it relates to this. 4 Q. To pricing practices -- 5 A. Yes. 6 Q. -- in average wholesale price, for 7 example? 8 Aside from Abbott, were you aware of 9 any other pharmaceutical manufacturers being 10 investigated related to pricing issues? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: No. 13 BY MS. FORD: 14 Q. Do you recall any discussions in the 15 Medicare Working Group about investigations of 16 pharmaceutical manufacturers relating to their 17 pricing practices? 18 A. I do not recall any. 19 Q. Okay. If you'd look about halfway down 20 the page, there's a sentence which is indented 21 about one inch on each side and it's in bold, and 22 it says, "The federal government is also</p>

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<p style="text-align: right;">Page 302</p> <p>1 investigating payment rates for covered 2 outpatient drugs under Medicare and the 3 relationship of AWP to actual pharmacy cost." 4 A. "...outpatient drugs under Medicare." 5 Q. Does that refresh your recollection 6 about discussions during this time period, again, 7 December -- late December, early -- late December 8 of '96 or early '97 about investigations into 9 pricing issues or average wholesale price? 10 A. I don't know how this relates to 11 Abbott. 12 Q. I'm not asking in relationship to 13 Abbott. 14 A. Oh. 15 Q. I'm saying does it refresh your 16 recollection of general discussion or awareness 17 of investigations in the late '96, early '97 time 18 period? 19 A. My answer is it did not relate to my -- 20 to Abbott, so I didn't -- I might have read it, 21 but it didn't register. 22 Q. Okay, and then the second paragraph on</p>	<p style="text-align: right;">Page 304</p> <p>1 Again, does that refresh your 2 recollection about any investigations ongoing in 3 late '96, early '97 in the pharmaceutical 4 industry? 5 A. No. 6 Q. At any point in time did you become 7 aware of any government investigations into TAP's 8 marketing or sales practices? 9 A. Yes. 10 Q. And about when did that occur? 11 A. In the 1990s, they were accused. 12 Q. And do you recall how you became aware 13 of the investigation into TAP's marketing and 14 sales practices? 15 A. I assume via the newspaper. 16 Q. Was it a discussion at any Medicare 17 Working Group meetings that you can recall? 18 A. No. 19 Q. I'm going to focus now on the latter 20 part of your tenure at Abbott, so let's say from 21 about 1996 through 2003. 22 And do I understand correctly that from</p>
<p style="text-align: right;">Page 303</p> <p>1 the bottom, it says, "The Department of Justice 2 is also pursuing an antitrust investigation of 3 how AWP is calculated. The DOJ is understood to 4 be requesting information from drug companies. 5 The prescription drug price reference lists Red 6 Book, First DataBank's Price Alert, and Medi-Span 7 say they have not been contacted by DOJ to say 8 how their prices are determined." 9 Did I read that accurately? 10 A. That's as stated. 11 Q. Were you aware of this effort on the 12 part of DOJ to investigate AWP and how it was 13 calculated by drug manufacturers? 14 A. No. 15 Q. Okay. And then, finally, the 16 concluding paragraph on that page says, "The DOJ 17 inquiry is understood to stem at least in part 18 from drug pricing information provided by a home 19 infusion and nutritional service provider 20 involved in a separate investigation by the 21 General Accounting Office that had assembled 22 Medicare and drug pricing data."</p>	<p style="text-align: right;">Page 305</p> <p>1 that period, 1996 to 1998, you were the 2 Divisional Vice President for Corporate Planning? 3 A. Yes. 4 Q. And following that, Divisional Vice 5 President for E-Commerce? 6 A. Yes. 7 Q. And during that time period, 1996 to 8 2003, do you recall receiving any document called 9 "memoranda" related to investigations of Abbott? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: No. 12 BY MS. FORD: 13 Q. And let me ask you more generally. Do 14 you know what I'm speaking of? 15 A. Yes. Oh, yes, yes. 16 Q. Okay, and so we're on the same page, do 17 you understand me to be speaking about a 18 memoranda or some communication that would come 19 to you and say there's either an investigation or 20 a lawsuit and you're not to destroy documents and 21 you may be asked to collect them and provide them 22 to the Legal Department?</p>

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<p style="text-align: right;">Page 306</p> <p>1 A. Yes.</p> <p>2 Q. We have the same understanding about</p> <p>3 that?</p> <p>4 A. We have a common understanding.</p> <p>5 Q. So you don't recall anything between</p> <p>6 the 1996 to 2003 time period, any such document</p> <p>7 called "memoranda" coming your way?</p> <p>8 A. I got to answer it this way. I took no</p> <p>9 files from Corporate Planning when I left and</p> <p>10 went to my next assignment.</p> <p>11 Q. Okay. And prior to leaving Corporate</p> <p>12 Planning, do you recall receiving an instruction</p> <p>13 to preserve documents?</p> <p>14 A. No.</p> <p>15 Q. Okay. And when you left Corporate</p> <p>16 Planning to go to E-Commerce, what did you do</p> <p>17 with your files?</p> <p>18 A. Left them in the office.</p> <p>19 Q. Okay. And what happened to your</p> <p>20 computer, if you know?</p> <p>21 A. My computer? I think I took it with</p> <p>22 me.</p>	<p style="text-align: right;">Page 308</p> <p>1 from Corporate Development for him -- for your</p> <p>2 predecessor, whoever that may have been?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 BY MS. FORD:</p> <p>5 Q. Or I should say your successor, excuse</p> <p>6 me.</p> <p>7 A. Yeah.</p> <p>8 Q. The other would have been a little bit</p> <p>9 hard to do.</p> <p>10 Do you recall having your assistant</p> <p>11 make copies of any records and say, Leave these</p> <p>12 for my successor, he may need them when he gets</p> <p>13 here?</p> <p>14 A. I would have purged dead files --</p> <p>15 Q. Okay.</p> <p>16 A. -- you know, things we assumed we'd</p> <p>17 never go back into, business analysis.</p> <p>18 Q. Would that have included the Medicare</p> <p>19 Working Group? Was that a dead file by 1998?</p> <p>20 A. I left in '97. Oh, I left December</p> <p>21 '98. I left -- I do not -- I do not re -- I don't</p> <p>22 know.</p>
<p style="text-align: right;">Page 307</p> <p>1 Q. Okay. And would you have also taken</p> <p>2 with you the -- the working files that you had</p> <p>3 generated during your 1996 to '98 time period in</p> <p>4 Corporate Planning?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Did someone replace you in your</p> <p>7 position as Divisional Vice President for</p> <p>8 Corporate Planning?</p> <p>9 A. Yes.</p> <p>10 Q. And who was that?</p> <p>11 A. I don't know the gentleman's name. I</p> <p>12 would -- or I should say I don't recall his name.</p> <p>13 Q. Okay. Was there any time period that</p> <p>14 you two overlapped?</p> <p>15 A. No.</p> <p>16 Q. Was there any effort on your part to</p> <p>17 transition between the two of you for that --</p> <p>18 A. No.</p> <p>19 Q. -- position?</p> <p>20 A. There was a gap.</p> <p>21 Q. Okay. Do you recall taking it --</p> <p>22 taking any efforts to prepare your working files</p>	<p style="text-align: right;">Page 309</p> <p>1 Q. Okay, and remind me again, what month</p> <p>2 did you leave in '98?</p> <p>3 A. Oh, God. I say December '98 --</p> <p>4 Q. Okay.</p> <p>5 A. -- but I'm not positive, you know.</p> <p>6 Q. And do you recall making any attempts</p> <p>7 to transfer information that was on your computer</p> <p>8 to save for the person who was going to be in</p> <p>9 that position?</p> <p>10 A. I'm not -- let me go back. I'm not --</p> <p>11 I cannot say for certainty that I took it or did</p> <p>12 not take it.</p> <p>13 Q. Okay.</p> <p>14 A. I just don't -- I mean I don't know.</p> <p>15 Q. Okay. Regardless of whether you took</p> <p>16 your computer or you didn't, do you recall doing</p> <p>17 anything with the information on the computer to</p> <p>18 preserve or provide that to your successor?</p> <p>19 A. No.</p> <p>20 Q. So I take it that, since you weren't</p> <p>21 aware of any investigations into Abbott's pricing</p> <p>22 practices, that you weren't aware of a simple</p>

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<p style="text-align: right;">Page 310</p> <p>1 investigative demand issued by the Office of 2 Inspector General of the Department of Health and 3 Human Services in 1996; is that -- is that a fair 4 -- 5 A. That is fair. 6 Q. -- assessment? 7 Okay. And, similarly, were you aware 8 of a subpoena by the Department of Health and 9 Human Services issued to Abbott in 1997 for 10 documents? 11 A. No. 12 MS. FORD: Okay. Would you all mind if 13 we take a five-minute break and -- 14 MS. TABACCHI: And rest? 15 THE VIDEOGRAPHER: We are off the 16 record at 4:38 p.m. 17 (Recess taken.) 18 THE VIDEOGRAPHER: We are back on the 19 record at 4:48 p.m. 20 MS. THOMAS: Good afternoon, Mr. 21 Miller. 22 THE WITNESS: Good afternoon.</p>	<p style="text-align: right;">Page 312</p> <p>1 your answer to that, you noted that you know this 2 from personal experience. And I wanted to know, 3 please, if you could describe for us what 4 personal experience you were referring to? 5 A. My mother, Medicare Part D. 6 Q. Could you explain that? 7 A. Yeah. 8 MS. TABACCHI: Object to the form. 9 You're asking him to explain Medicare 10 Part D? 11 MS. THOMAS: Yes, absolutely. He'll do 12 it briefly, I'm sure. 13 THE WITNESS: Drugs that are -- when 14 patients go to the doctor, if the -- if the drug 15 is reimbursed, they are much more willing to take 16 that drug than if it's not reimbursed and they 17 have to take it -- pay for it out of their own 18 pocket. 19 BY MS. THOMAS: 20 Q. You also testified in response to a 21 question by Ms. Ford that any change in 22 reimbursement could affect the profitability of a</p>
<p style="text-align: right;">Page 311</p> <p>1 MS. THOMAS: I introduced myself 2 earlier, but I will again, Susan Schneider 3 Thomas. I am an attorney representing the 4 Relator, Ven-a-Care of the Florida Keys, who was 5 involved in the California and federal 6 litigations as well as the litigation brought by 7 the State of Texas. 8 I will try even harder, since I'm 9 third, to avoid repeating, although you may not 10 think so at first because my questions will 11 relate to some of the same documents, but they 12 will be limited. 13 14 DIRECT EXAMINATION 15 BY MS. THOMAS: 16 Q. If you would, sir, earlier today you 17 testified in response to one of Mr. Sisneros's 18 questions talking about if a product is not 19 reimbursed, it's generally not prescribed. Do 20 you vaguely recall that testimony? 21 A. I recall. 22 Q. Okay, and in part, in elaborating on</p>	<p style="text-align: right;">Page 313</p> <p>1 product. Do you recall that testimony? 2 A. Yes. 3 Q. Okay. Could you explain whose 4 profitability you were referring to? Was that 5 from Abbott's perspective? 6 A. Anybody in the chain. 7 Q. From Abbott's perspective, could you 8 explain how a change in reimbursement methodology 9 could affect the profitability of one of Abbott's 10 drugs? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: That question's been 13 answered, I think, but I'll go back again. 14 Basically, if it's a drug in the -- 15 I'll use a drug in a physician office as an 16 example. If the only reimbursement that physician 17 gets is the AWP of that drug, and that's reduced 18 enough, that doctor will not do that -- continue 19 that business or he'll find alternative 20 therapies. 21 BY MS. THOMAS: 22 Q. And that affects the profitability of</p>

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<p style="text-align: right;">Page 314</p> <p>1 the product for Abbott in what manner?</p> <p>2 A. Abbott may not -- its -- Abbott's sales</p> <p>3 may go down.</p> <p>4 Q. If you would look, please, back at</p> <p>5 Exhibit Miller 1163 --</p> <p>6 A. Exhibit Miller 1163.</p> <p>7 Q. And, to your knowledge, by the way,</p> <p>8 when you refer to the fact that Abbott's sales</p> <p>9 may go down, is that a concept that was discussed</p> <p>10 in the Medicaid -- in the Medicare Working Group?</p> <p>11 MS. TABACCHI: Objection form.</p> <p>12 MR. SOFFER: Objection, vague.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And is that how you came to that</p> <p>16 understanding or was it just more or less a</p> <p>17 matter of common sense for you to understand</p> <p>18 that?</p> <p>19 A. It's common sense for me.</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MS. THOMAS:</p> <p>22 Q. On Exhibit Miller 1163, if you would</p>	<p style="text-align: right;">Page 316</p> <p>1 office.</p> <p>2 Q. But when it says "would be affected by</p> <p>3 this proposal," what is "the proposal"?</p> <p>4 A. It could potentially be impacted by a</p> <p>5 change in Medicare pricing.</p> <p>6 Q. Okay. And was the proposal that was</p> <p>7 being discussed here, as I believe has been</p> <p>8 talked about at length today, a possible change</p> <p>9 from AWP-based reimbursement to acquisition-cost-</p> <p>10 based reimbursement?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I think there were --</p> <p>13 that was one of the proposals.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And do you believe that's the proposal</p> <p>16 that you were referring to when you said "would</p> <p>17 be affected by this proposal" --</p> <p>18 A. I do not --</p> <p>19 Q. -- in the paragraph?</p> <p>20 A. I do not recall.</p> <p>21 Q. And if you could look, sir, please at</p> <p>22 Exhibit Miller 1164 and Exhibit Miller 1165?</p>
<p style="text-align: right;">Page 315</p> <p>1 look at page 2, Abbott 52841?</p> <p>2 A. (Witness so doing).</p> <p>3 Q. Under the bullet point "Changing the</p> <p>4 reimbursement price," there's the first paragraph</p> <p>5 that talks about the 900,000 million in sales</p> <p>6 that would be affected, and then there's the</p> <p>7 second paragraph talking about the rebate system,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. You probably almost know these by heart</p> <p>11 at this point.</p> <p>12 The first part of that is referring to</p> <p>13 what would happen if there was a change from an</p> <p>14 AWP-based reimbursement to an acquisition cost</p> <p>15 reimbursement system, correct?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. THOMAS:</p> <p>19 Q. What is the first point talking about?</p> <p>20 A. The first stop point only states the</p> <p>21 sales value of two products, well, or products</p> <p>22 and that Abbott and TAP sell in the physician</p>	<p style="text-align: right;">Page 317</p> <p>1 A. (Witness so doing).</p> <p>2 Q. If you look at your handwritten note,</p> <p>3 which is Exhibit Miller 1165, and you look at the</p> <p>4 minutes from the Medicare Working Group meeting</p> <p>5 on 1/21/97, which is the beginning of the second</p> <p>6 page of Exhibit Miller 1164, the discussion under</p> <p>7 "Average Wholesale Price" in the minutes more or</p> <p>8 less tracks your handwritten notes, does it not?</p> <p>9 A. The same subject matter is there.</p> <p>10 Q. And it kind of goes through the</p> <p>11 different points that Medicare is based on the</p> <p>12 AWP and the payment is 80% of AWP and the</p> <p>13 reference to AWP as the manufacturer's price plus</p> <p>14 a markup of 15 to 20%, which in your handwritten</p> <p>15 notes appears to be expressed as "AWP equals</p> <p>16 acquisition cost plus 20 to 25%."</p> <p>17 Do they seem to be fairly parallel</p> <p>18 concepts to you?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: The same points are in</p> <p>21 both documents.</p> <p>22 BY MS. THOMAS:</p>

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<p>1 Q. Okay. And it was talked about a little</p> <p>2 bit earlier, but I'm wondering if you would</p> <p>3 please reread the second bullet point under</p> <p>4 "Average Wholesale Price" in those minutes? If</p> <p>5 you would just read that to yourself, "The</p> <p>6 Medicare pays 80%"?</p> <p>7 A. (Witness so doing).</p> <p>8 Okay.</p> <p>9 Q. Do you understand from this or did you</p> <p>10 believe that the minutes from the Medicare</p> <p>11 Working Group were attempting to explain that it</p> <p>12 is the co-pay, the 20% co-pay that is paid by the</p> <p>13 patient or the Medigap carrier that provides the</p> <p>14 provider's profit?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: That's --</p> <p>17 BY MS. THOMAS:</p> <p>18 Q. Let me ask you this way. You are, I</p> <p>19 believe, a self-proclaimed numbers guy. Could</p> <p>20 you explain what this paragraph is trying to say?</p> <p>21 A. The answer is no, but I will tell from</p> <p>22 you my personal experience this is not consistent</p>	<p>1 Q. And by "our sales," you're referring to</p> <p>2 Abbott's home care business?</p> <p>3 A. Yes.</p> <p>4 Q. And these are sales to whom?</p> <p>5 A. Medicare, Medicaid, private insurance.</p> <p>6 Q. Sales to them or sales to people that</p> <p>7 are covered by those programs?</p> <p>8 A. Sales to people who are covered by</p> <p>9 those programs. We billed on behalf of the</p> <p>10 patient.</p> <p>11 Q. And 30% of what was deemed</p> <p>12 uncollectable, the co-pay or --</p> <p>13 A. The total sales.</p> <p>14 Q. So medicines that were provided to</p> <p>15 patients who were Medicare or Medicaid recipients</p> <p>16 were what, not reimbursed by Medicare/Medicaid at</p> <p>17 approximately 30% of those total sales?</p> <p>18 A. Yes.</p> <p>19 Q. Did you come to some understanding of -</p> <p>20 - as to why that was?</p> <p>21 A. That was -- the industry trend was over</p> <p>22 20%. It's published.</p>
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<p>1 with the market.</p> <p>2 Q. So it's essentially your understanding</p> <p>3 that the way this paragraph is written is not</p> <p>4 accurate?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Based on Abbott's</p> <p>7 experience in the home care business, it is not</p> <p>8 accurate.</p> <p>9 BY MS. THOMAS:</p> <p>10 Q. And what experience are you referring</p> <p>11 to, sir?</p> <p>12 A. Abbott was in the home care business</p> <p>13 '83, '84, I believe. I'm going from memory.</p> <p>14 Maybe '84, '85.</p> <p>15 Q. And what knowledge did you obtain from</p> <p>16 that Abbott experience that allows you to</p> <p>17 conclude that this is not an accurate statement</p> <p>18 here in the minutes?</p> <p>19 A. 30% -- 30% of our sales were</p> <p>20 uncollectable.</p> <p>21 Q. Can you explain what that means?</p> <p>22 A. We wrote them off as bad debt expense.</p>	<p>1 Q. But why was that? I mean what was the</p> <p>2 explanation for Medicare, Medicaid or other</p> <p>3 third-party payers not paying --</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 BY MS. THOMAS:</p> <p>6 Q. (Continuing) -- for approximately 30%?</p> <p>7 A. I do not know.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 MR. SOFFER: Objection.</p> <p>10 BY MS. THOMAS:</p> <p>11 Q. You never had heard an explanation for</p> <p>12 that?</p> <p>13 A. (Witness shaking head.)</p> <p>14 MS. TABACCHI: Mr. Miller, you need to</p> <p>15 answer audibly.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MS. THOMAS:</p> <p>18 Q. How did you obtain any understanding</p> <p>19 from Abbott's home care business? Had you been</p> <p>20 involved in that business?</p> <p>21 A. I was the division controller.</p> <p>22 Q. That's right. You said that earlier.</p>

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<p style="text-align: right;">Page 322</p> <p>1 If you would look down a couple of</p> <p>2 bullet points to the new heading "Lupron"? It's</p> <p>3 on the same page of the minutes, 52706.</p> <p>4 A. Yes.</p> <p>5 Q. And it says, "In two states, an</p> <p>6 acquisition cost strategy was implemented, which</p> <p>7 caused serious problems for Abbott. Since the</p> <p>8 providers were being reimbursed at 80% of the</p> <p>9 acquisition cost (which is 15 to 20% lower than</p> <p>10 AWP) the providers were losing all of their</p> <p>11 profit."</p> <p>12 Do you see where I was reading?</p> <p>13 A. As stated.</p> <p>14 Q. Okay. Do you have any recollection of</p> <p>15 discussing that in a Medicare Working Group</p> <p>16 meeting?</p> <p>17 A. This is as was reported by TAP.</p> <p>18 Q. Do you recall whether the issue had to</p> <p>19 do with a payer refusing to provide coverage or</p> <p>20 reimbursement at all for Lupron versus lowering</p> <p>21 the reimbursement for Lupron?</p> <p>22 A. I do not recall.</p>	<p style="text-align: right;">Page 324</p> <p>1 A. No.</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 BY MS. THOMAS:</p> <p>4 Q. And in the second sentence, when it</p> <p>5 refers to "the providers losing all of their</p> <p>6 profit," do you understand what that refers to?</p> <p>7 A. No.</p> <p>8 Q. Sir, did you have any involvement in</p> <p>9 about 2000 or 2001 with a multi-product list</p> <p>10 price change that was engaged in by Abbott?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. THOMAS:</p> <p>14 Q. Do you ever recall hearing, whether</p> <p>15 from your work at Abbott or in the public press,</p> <p>16 of an effort undertaken by Abbott in that time</p> <p>17 period to change its reported prices for a wide</p> <p>18 range of its products?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MS. THOMAS:</p> <p>22 Q. You lived in or about Chicago at that</p>
<p style="text-align: right;">Page 323</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 MR. SOFFER: Objection.</p> <p>3 BY MS. THOMAS:</p> <p>4 Q. When it makes reference to "an</p> <p>5 acquisition cost strategy," what do you</p> <p>6 understand that to be?</p> <p>7 A. I do not recall.</p> <p>8 Q. In the context of all of the discussion</p> <p>9 and documents that have been talked about today,</p> <p>10 do you understand that to refer to a</p> <p>11 reimbursement methodology that is based on</p> <p>12 acquisition cost rather than AWP?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I do not have a</p> <p>15 definition for action -- acquisition cost</p> <p>16 strategy.</p> <p>17 BY MS. THOMAS:</p> <p>18 Q. Do you have any understand what that's</p> <p>19 referring to or can --</p> <p>20 A. No.</p> <p>21 Q. Can you derive an understanding by</p> <p>22 reading that paragraph?</p>	<p style="text-align: right;">Page 325</p> <p>1 point in time, 2000, 2001?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Okay, and you don't recall seeing</p> <p>4 anything even in the public press about Abbott</p> <p>5 changing its prices?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. THOMAS:</p> <p>9 Q. And you don't recall hearing anything</p> <p>10 at work about that?</p> <p>11 A. No.</p> <p>12 Q. Okay. You testified earlier when you</p> <p>13 were asked about the establishment of the</p> <p>14 Medicare Working Group that one of the things you</p> <p>15 did at the outset was you looked at the processes</p> <p>16 for getting reimbursement or coverage in various</p> <p>17 divisions, and you mentioned that the different</p> <p>18 divisions had limited similarities in terms of</p> <p>19 how products are approved or reimbursed.</p> <p>20 Do you generally remember that</p> <p>21 testimony?</p> <p>22 A. I do.</p>

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<p style="text-align: right;">Page 326</p> <p>1 Q. Could you explain, sir, in more detail</p> <p>2 what you did to ascertain how products got</p> <p>3 approved or the reimbursement methodology in the</p> <p>4 various Abbott divisions?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: There were discussions</p> <p>7 with the representatives on what government</p> <p>8 agencies approved their products.</p> <p>9 BY MS. THOMAS:</p> <p>10 Q. To the best of your recollection, was</p> <p>11 this an oral discussion at a meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Did you get any type of reports from</p> <p>14 the various divisions?</p> <p>15 A. No.</p> <p>16 Q. And you -- you indicated that you</p> <p>17 learned that the products in the different</p> <p>18 divisions had limited similarities in terms of</p> <p>19 approval or reimbursement?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. So you just noted that there</p> <p>22 were discussions with representatives about what</p>	<p style="text-align: right;">Page 328</p> <p>1 who our customers were among the divisions. We</p> <p>2 had very little overlap of customers.</p> <p>3 BY MS. THOMAS:</p> <p>4 Q. And what is the connection between who</p> <p>5 the customers are and the reimbursement</p> <p>6 methodology, as you understood it?</p> <p>7 A. Tried to identify if a business risk</p> <p>8 opportunity would affect more than one division.</p> <p>9 Q. Would that apply, say, to trying to</p> <p>10 understand whether a change in Medicare or</p> <p>11 Medicaid reimbursement methodology would impact</p> <p>12 across divisions for Abbott?</p> <p>13 A. That is correct.</p> <p>14 Q. And did you learn anything about the</p> <p>15 different divisions that led you to conclude that</p> <p>16 there were similar concerns across the divisions</p> <p>17 about changes specifically in Medicare or</p> <p>18 Medicaid reimbursement methodology?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: There was limited sales</p> <p>21 of products to common customers.</p> <p>22 BY MS. THOMAS:</p>
<p style="text-align: right;">Page 327</p> <p>1 government agencies approved their products.</p> <p>2 How did you learn about how products</p> <p>3 were reimbursed in the different divisions?</p> <p>4 A. Same discussion.</p> <p>5 Q. And do you have any recollection of</p> <p>6 what you learned about reimbursement methodology</p> <p>7 as you embarked on this Medicare Working Group</p> <p>8 project?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: It was more a discussion</p> <p>11 of who is your customer and who pays your</p> <p>12 customer.</p> <p>13 BY MS. THOMAS:</p> <p>14 Q. Why was it important to know who the</p> <p>15 customers were?</p> <p>16 A. I was looking for potential for</p> <p>17 synergies among the divisions.</p> <p>18 Q. And what you found instead was that</p> <p>19 there were differences from a reimbursement</p> <p>20 perspective among the divisions at Abbott?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: There were differences in</p>	<p style="text-align: right;">Page 329</p> <p>1 Q. And what is the significance of that,</p> <p>2 if any, to concerns about reimbursement</p> <p>3 methodology or the impact of Medicaid/Medicare</p> <p>4 reimbursement methodology?</p> <p>5 A. If you have a common customer, I assume</p> <p>6 you have a common payer.</p> <p>7 Q. So when you're referring to the</p> <p>8 differences in customers, are you saying that the</p> <p>9 ultimate users of the drug product were</p> <p>10 reimbursed by -- were covered by different third-</p> <p>11 party payers depending upon who Abbott's direct</p> <p>12 customers were?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I'm confused.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. You've indicated that you've learned</p> <p>17 that the different divisions had different</p> <p>18 customers?</p> <p>19 A. (Witness nodding.)</p> <p>20 Q. And I'm asking if you could explain why</p> <p>21 that is of significance in evaluating possible</p> <p>22 changes in Medicare or Medicare reimbursement</p>

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<p style="text-align: right;">Page 330</p> <p>1 methodology?</p> <p>2 A. Let's take an example.</p> <p>3 Q. Okay.</p> <p>4 A. The drugs dispensed in the doctor's</p> <p>5 office, there were only two drugs mentioned in</p> <p>6 the memos among all the divisions and including</p> <p>7 the joint venture TAP. So there's not a lot of</p> <p>8 overlap. So any change to reimbursement for the</p> <p>9 doctor's office would affect two groups.</p> <p>10 Q. How about drugs other than physician-</p> <p>11 administered drugs, drugs that are dispensed by</p> <p>12 pharmacies?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 MR. SOFFER: Objection.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. Did Abbott have any drugs like that</p> <p>17 that were subject to Medicare or Medicaid</p> <p>18 coverage?</p> <p>19 A. I do not know.</p> <p>20 Q. Do you ever recall any discussion of</p> <p>21 drugs other than those few physician-administered</p> <p>22 drugs that you referenced?</p>	<p style="text-align: right;">Page 332</p> <p>1 1121?</p> <p>2 Q. Yes.</p> <p>3 A. Got it.</p> <p>4 Q. And the cover memo refers to</p> <p>5 information -- and I'm not going to pronounce the</p> <p>6 guy's name any better. How do you pronounce his</p> <p>7 name?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. (Continuing) -- Mike Tootell,</p> <p>10 that he asked Mr. Rieger to circulate, and it</p> <p>11 attaches two different articles. And I'm</p> <p>12 wondering, sir, if you would look to the first</p> <p>13 one, the Medicare Part B payment for drugs?</p> <p>14 A. (Witness so doing).</p> <p>15 Q. Do you know anything about that</p> <p>16 document, i.e., who generated it, where it came</p> <p>17 from?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Do you have any idea if that's an</p> <p>20 Abbott document?</p> <p>21 A. I have no idea.</p> <p>22 Q. If you would look in the second</p>
<p style="text-align: right;">Page 331</p> <p>1 A. I do not recall.</p> <p>2 Q. Do you recall any discussion with the</p> <p>3 division representative from the HPD about</p> <p>4 differences among the sort of subgroups of HPD in</p> <p>5 terms of Medicare/Medicaid reimbursement?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. THOMAS:</p> <p>9 Q. Did you learn anything about alternate</p> <p>10 site and its relationship to Medicare or Medicaid</p> <p>11 reimbursement?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Alternate site was never</p> <p>14 discussed in the Medicare meetings, to the best</p> <p>15 of my knowledge.</p> <p>16 BY MS. THOMAS:</p> <p>17 Q. If you would look back, please, at the</p> <p>18 exhibit that was handed to you earlier that was</p> <p>19 previously marked as Plaintiff's Exhibit 1121?</p> <p>20 It's the December 20th, 1996 memo with</p> <p>21 attachments.</p> <p>22 A. Bear with me. Oh, Plaintiff's Exhibit</p>	<p style="text-align: right;">Page 333</p> <p>1 paragraph, sir, where it -- which starts, "There</p> <p>2 have been several studies," and then it talks</p> <p>3 about, "The common conclusion of these efforts is</p> <p>4 that the use of AWP as a payment measure results</p> <p>5 in excessive reimbursement."</p> <p>6 Do you remember discussing that issue</p> <p>7 at any of the Medicare Working Group meetings?</p> <p>8 A. Repeat the question, please.</p> <p>9 Q. Do you remember discussing the issue of</p> <p>10 excessive reimbursement due to AWP-based</p> <p>11 reimbursement?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. And then the next sentence, sir, reads,</p> <p>16 "In other words, there is some evidence that</p> <p>17 often the AWP for a drug is set at a particular</p> <p>18 level to establish third-party reimbursement, but</p> <p>19 has no relevance to any party beyond the third-</p> <p>20 party payer."</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 334</p> <p>1 Q. Do you have any understanding what that</p> <p>2 is referring to, sir?</p> <p>3 A. As I stated previously, I don't know</p> <p>4 where -- who prepared this document.</p> <p>5 Q. Did you have any understanding, as best</p> <p>6 you recall, of what that was referring to?</p> <p>7 A. No.</p> <p>8 Q. Do you recall discussing that notion</p> <p>9 that the AWP for a drug is set essentially with</p> <p>10 an eye towards third-party reimbursement?</p> <p>11 A. No.</p> <p>12 Q. Do you ever recall anybody mentioning</p> <p>13 that topic?</p> <p>14 A. No.</p> <p>15 Q. Okay, do you ever recall any discussion</p> <p>16 while you were at Abbott of the notion that</p> <p>17 physicians or pharmacies need to be paid more</p> <p>18 than their actual acquisition cost of a drug in</p> <p>19 order to make sure to provide them with an</p> <p>20 adequate profit or payment for the services that</p> <p>21 they render?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 336</p> <p>1 A. Is this a hospital, alternate site,</p> <p>2 office?</p> <p>3 Q. I'm referring to physicians and</p> <p>4 pharmacies.</p> <p>5 A. Physicians and pharmacies?</p> <p>6 Q. Physicians and pharmacies. Sorry.</p> <p>7 A. I'm going to say no.</p> <p>8 Q. Do you have any knowledge on that</p> <p>9 subject one way or the other?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you ever hear any</p> <p>12 conversation or see any documents while you were</p> <p>13 at Abbott about the concept of trying to insure</p> <p>14 that the reimbursement for the ingredient portion</p> <p>15 of a drug needs to be set high because the</p> <p>16 service and dispen -- and/or dispensing fees to</p> <p>17 the providers was too low?</p> <p>18 A. No.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 BY MS. THOMAS:</p> <p>21 Q. Okay, if you would look, sir, please,</p> <p>22 to the next attachment to that same exhibit,</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: As I testified earlier,</p> <p>2 the reimbursement price for a product must</p> <p>3 compensate the doctor or pharmacist for the cost</p> <p>4 of acquiring the product and their services and</p> <p>5 some return.</p> <p>6 BY MS. THOMAS:</p> <p>7 Q. Do you ever recall any discussion while</p> <p>8 you were at Abbott of the concept that it would</p> <p>9 be appropriate for the -- well, strike that.</p> <p>10 Are you aware, sir, in general that</p> <p>11 physicians and pharmacies receive more than just</p> <p>12 a drug ingredient cost component of reimbursement</p> <p>13 --</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MS. THOMAS:</p> <p>16 Q. (Continuing) -- either a service fee or</p> <p>17 a dispensing fee?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: In what setting?</p> <p>20 BY MS. THOMAS:</p> <p>21 Q. In -- being reimbursed by a government</p> <p>22 --</p>	<p style="text-align: right;">Page 337</p> <p>1 Plaintiff's Exhibit 1121, Abbott page 53266</p> <p>2 called, "Competitive bidding and you, the</p> <p>3 consumer."</p> <p>4 A. (Witness so doing).</p> <p>5 Q. Do you have any idea whose document</p> <p>6 this is?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Do you have any idea whether it's an</p> <p>9 Abbott document?</p> <p>10 A. I have no idea.</p> <p>11 Q. In the second paragraph, about two-</p> <p>12 thirds of the way down, when it says, "Our</p> <p>13 coalition strongly believes in competition" --</p> <p>14 A. I have no idea.</p> <p>15 Q. You have no idea what that means --</p> <p>16 A. Who that is.</p> <p>17 Q. -- by "our coalition"?</p> <p>18 A. Right.</p> <p>19 Q. If you would look towards the end of</p> <p>20 the document where it says, "The coalition to</p> <p>21 preserve healthcare quality and competition" --</p> <p>22 actually, it's at the very end. I'm sorry.</p>

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<p>1 A. Which page?</p> <p>2 Q. 53269.</p> <p>3 A. 53269. 53269?</p> <p>4 Q. Yeah. I believe it's the last page.</p> <p>5 Well, it's the last page of my copy of it.</p> <p>6 A. Mine says --</p> <p>7 Q. I think you're on it. No?</p> <p>8 A. "The President can be reached by</p> <p>9 contacting the White House at 202"?</p> <p>10 Q. Yes.</p> <p>11 A. Oh.</p> <p>12 Q. I'm sure that's a direct dial number</p> <p>13 too.</p> <p>14 A. I'm sorry.</p> <p>15 Q. But maybe Bush had it changed.</p> <p>16 A. I was astounded.</p> <p>17 Q. This was Clinton's. Perhaps it's</p> <p>18 different with Bush.</p> <p>19 A. Okay.</p> <p>20 Q. In any event, do you see "the coalition</p> <p>21 to preserve healthcare quality and competition."</p> <p>22 A. I -- as stated.</p>	<p>1 refer to it as.</p> <p>2 Given what you had indicated you</p> <p>3 understood to be its purpose, which was sharing</p> <p>4 information across divisions, was there some</p> <p>5 reason -- well, strike that.</p> <p>6 Did you decide that sharing information</p> <p>7 about reimbursement was not serving any purpose</p> <p>8 or was no longer important for some reason?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I believe it died of</p> <p>11 inertia. There was no drive from the divisions or</p> <p>12 corporate to keep it alive.</p> <p>13 BY MS. THOMAS:</p> <p>14 Q. Was it your perception that anyone</p> <p>15 within Abbott affirmatively thought that that</p> <p>16 group should not continue because it posed some</p> <p>17 problem?</p> <p>18 A. No.</p> <p>19 Q. So basically you stopped getting</p> <p>20 pressure from above, you stopped setting it up,</p> <p>21 and nobody came to meetings because nobody called</p> <p>22 them?</p>
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<p>1 Q. Have you -- do you have any</p> <p>2 recollection of having heard of that coalition?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Does the name underneath it, the</p> <p>5 National Association of Medical Equipment</p> <p>6 Services, mean anything to you?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Sir, you were asked earlier if you were</p> <p>9 aware of government investigations or litigation</p> <p>10 with various drug companies.</p> <p>11 I just want to ask you specifically do</p> <p>12 you have any recollection in about the year of</p> <p>13 2000, 2001 of hearing about a settlement by Bayer</p> <p>14 with the government concerning an AWP lawsuit?</p> <p>15 A. I do not.</p> <p>16 Q. Do you recall hearing anything about</p> <p>17 settlements by several drug companies with the</p> <p>18 State of Texas in about 2003 regarding price</p> <p>19 reporting practices?</p> <p>20 A. I do not.</p> <p>21 Q. You testified about the demise or end</p> <p>22 of the Medicare Working Group, whatever you would</p>	<p>1 A. That's my recollection.</p> <p>2 Q. You've indicated earlier that you gave</p> <p>3 Mr. Moorehead monthly reports that might</p> <p>4 reference the Medicare Working Group if there was</p> <p>5 anything significant that happened.</p> <p>6 Were those written reports, sir?</p> <p>7 A. Yes.</p> <p>8 Q. To your knowledge, do they still exist?</p> <p>9 A. I have no knowledge.</p> <p>10 Q. When you left your position, do you</p> <p>11 know what you did with your copies of those</p> <p>12 monthly reports?</p> <p>13 A. No.</p> <p>14 MS. THOMAS: We'll just take a quick</p> <p>15 break --</p> <p>16 THE WITNESS: Sure.</p> <p>17 MS. THOMAS: -- and then we won't --</p> <p>18 THE VIDEOGRAPHER: We are off the</p> <p>19 record at 5:23 p.m.</p> <p>20 (Recess taken.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record at 5:26 p.m.</p>

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<p style="text-align: right;">Page 342</p> <p>1 MS. THOMAS: This seems very 2 anticlimactic, but we are finished. I have no 3 further questions unless anyone else does. 4 MR. STUART: No. 5 MR. SISNEROS: No. 6 MS. TABACCHI: I will ask the court 7 reporter to mark the transcript under the 8 protective order, please. Thank you. 9 THE VIDEOGRAPHER: We are off the 10 record at 5:27 p.m. with the conclusion of the 11 deposition of James Miller. 12 (WHEREUPON, FURTHER DEPONENT 13 SAYETH NOT) 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 344</p> <p>1 STATE OF ILLINOIS)) ss: 2 COUNTY OF COOK) I, Deborah Habian, a Certified Shorthand 3 Reporter within and for the State of Illinois, do hereby certify: 4 That previous to the commencement of the examination of the witness, the witness was duly sworn 5 to testify the whole truth concerning the matters herein; 6 That the foregoing deposition was reported stenographically by me, was thereafter reduced to 7 printed transcript by me, and constitutes a true record of the testimony given and the proceedings had; 8 That the said deposition was taken before me at the time and place specified; 9 That the reading and signing by the 10 witness of the deposition transcript was agreed upon 11 as stated herein; 12 That I am not a relative or employee of 13 attorney or counsel, nor a relative or employee of 14 such attorney or counsel for any of the parties 15 hereto, nor interested directly or indirectly in 16 the outcome of this action. 17 IN WITNESS WHEREOF, I do hereunto set my 18 hand this ____ day of _____, 2007. 19 20 DEBORAH HABIAN, CSR, RMR, CRR, CBC 21 Notary Public 22 CSR No. 084-022432</p>
<p style="text-align: right;">Page 343</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MASSACHUSETTS 3 IN RE: PHARMACEUTICAL) 4 INDUSTRY AVERAGE WHOLESAL) 5 PRICE LITIGATION) MDL No. 1456 -----) Civil Action 6 This document relates to:) No. 01-12257-PBS 7 United States of America,) 8 ex. rel. Ven-a-Care of the) 9 Florida Keys, Inc.,) Hon. Patti Saris vs.) 10 Abbott Laboratories, Inc.,) Magistrate Judge 11 CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler 12 I hereby certify that I have read the 13 foregoing transcript of my deposition given at the 14 time and place aforesaid, consisting of pages 1 to 15 283, inclusive, and I do again subscribe and make oath 16 that the same is a true, correct, and complete 17 transcript of my deposition so given as aforesaid and 18 includes changes, if any, so made by me. 19 20 21 22</p> <p style="text-align: center;">_____ JAMES E. MILLER SUBSCRIBED AND SWORN TO before me this ____ day of _____, A.D. _____.</p> <p style="text-align: center;">_____ Notary Public</p>	

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